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PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 28th March, 1957

S.R.O. 1119.—Whereas the election of Sri Vyricherla Chandra Chudamani Dev, as a member of the Legislative Assembly of the State of Andhra from the Parvathipuram constituency of that Assembly, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Sri Chikati Parasuram Naidu, Advocate, Parvathipuram, Srikakulam District;

And, whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT RAJAHMUNDRY (ANDHRA), CAMPING AT TANUKU

Tuesday, the 19th day of March 1957

PRESENT

Sri T. H. M. Sadasivayya, M.A., B.L., *Chairman.*

Sri C. Narasimhacharyulu, B.A. M.L., *Judicial Member.*

Sri M. Sitharamayya, B.A., B.L., *Advocate Member.*

ELECTION PETITION No. 4 OF 1955.

(Parvatipur Constituency—Srikakulam Dt.)

Between:—

Sri Chikati Parasuram Naidu, son of Naran Naidu, Koppula Velama, Advocate, 43 years, Parvatipuram, Srikakulam District, Andhra State—*Petitioner.*

and

Sri Vyricherla Chandra Chudamani Dev, son of Narasimha Suryanarayana **Dev, Kshatriya, 35 years**, Kurupam, Parvatipuram Taluk, Srikakulam District, Andhra State—*Respondent.*

Petition dated 27th April 1955 under Section 81 of the Representation of the People Act, 1951, praying to declare that the election of the respondent to the Andhra Legislative Assembly from the Parvatipuram Constituency in Srikakulam District is void and that the petitioner is duly elected, that the respondent be directed to pay the costs of the petition and that such other appropriate relief as the Tribunal deems proper may be granted.

This petition coming on for hearing before the Tribunal, on Tuesday (20th December 1955), Wednesday (21st December 1955), Wednesday (1st February 1956), Thursday 2nd August 1956), Friday 3rd August 1956), Saturday (4th August 1956), Monday (3rd September 1956), Tuesday (4th September 1956), Wednesday (5th September 1956), Tuesday (16th October 1956), Thursday (18th October 1956), Friday (19th October 1956), Saturday (20th October 1956), Friday (23rd November 1956), Saturday (24th November 1956), Monday (26th November 1956), Tuesday (27th November 1956), Wednesday (28th November 1956), Wednesday (19th December 1956), Thursday (20th December 1956), Friday (21st December 1956), Monday (7th January 1957), Tuseday (8th January 1957), Wednesday (9th January 1957), Thursday (10th January 1957), Friday (11th January 1957), Saturday (12th January 1957), Monday (21st January 1957) ad Tuesday (22d Jauary 1957), upon perusig the petition, list of particulars of corrupt and illegal practices furnished by the petitioner, the written statement of the respondent and other material papers on record, and upon hearing the arguments of Sri R. Venkateswararao and Sri G. Suryanarayana, Advocates for the petitioner and of Sri M. R. R. Madhavarao, Advocate and Sri A. Mohanarao, Pleader for the respondent, and the petition having stood over to this day for consideration, the Tribunal delivered the following:

JUDGMENT

This is a petition filed under Sections 81 and 117 of the Representation of the People Act, 1951 (hereinafter called the Act) praying to set aside the election of the respondent who was declared elected to the Andhra Legislative Assembly from the Parvatipur Constituency in the District of Srikakulam, at the election held on 15th February 1955. The election in question was a straight fight between Sri Cheekati Parasuram Naidu, the petitioner, representing the United Congress Front Party, and Sri Vyricherla Chandra Chudamani Dev, who contested the election as an Independent. The respondent got 27,480 votes while the petitioner polled 18,111 votes, the difference being 9,369. The respondent was declared elected. The petitioner challenges this election on grounds of statutory and constitutional disqualifications and also corrupt and illegal practices alleged to have been committed by the respondent.

2. The following are the main grounds upon which the petitioner seeks his relief:—

(a) In the year 1949-50 the respondent acted as the procuring agent of the Madras Government when it was a composite State for the supply of foodgrains to and for the performance of services undertaken by the Government under the Madras Essential Supplies (Foodgrains Control) Order, 1948. As a procuring agent he had to purchase foodgrains from the producers as directed by the Government from time to time, stock the same and deliver them to such persons as directed by the Government. The procuring agent was accountable to the Government for the stocks purchased by him at every stage of the operations. While acting in that capacity, the respondent tendered resignation of his agency to the District Collector, Srikakulam, and the same was accepted on 13th November 1951. The Collector, while accepting the resignation, called upon the respondent to discharge certain outstanding obligations pending against him, *viz.*, (1) the respondent had yet to deliver 222 maunds 56 pounds of rice and 52 maunds of paddy from out of the procured stock. (2) The Tahsildar, Parvatipur, had seized certain stocks from the custody of the sub-agent of the respondent, Gudla Satyanarayana, for having contravened the provisions of the Foodgrains Control Order and had filed criminal cases against him. The sub-agent was claiming from the Government the value of the stock seized from him on the ground that the seizure was illegal. (3) The Taluk Supply Officer, Parvatipur, made a surprise inspection on 1st June 1950 of the Victory Mills at Parvatipur, where the respondent was stocking his procured goods, and getting them milled. He found a deficit of 220 maunds 28 seers of rice and an excess of 444 bags of paddy. Charges were framed against the respondent, but they were later

dropped. Yet, the civil liability of the respondent continued and it was outstanding on the date of the nomination. (4) The Tahsildar left with Sri Gudla Satyanarayana on 1st June 1950 a stock of 26 bags of paddy. This has not been accounted for. All the above said obligations were outstanding on the material dates of nomination and election, *i.e.*, 3rd January 1955 and 15th February 1955 respectively, and as such the respondent is disqualified under section 7 clause (d) of the Act.

(b) In furtherance of the policy of the Government to increase the production of salt, the State Government leased out 300 acres of land at Kesavarayapadu to the minor son of the respondent's elder brother for manufacture of salt. The respondent and the said minor are members of a joint Hindu family and the lease was for the benefit of the joint family. Originally the lease was in the name of the minor's father and after his death the lease was taken *benami* in the name of the minor, though it was for the benefit of the joint family of which the respondent is a member. The lease was outstanding on the date of the nomination and as such the respondent is disqualified for election under section 7, clause (d) of the Act.

(c) The respondent was a member of the Railway Local Advisory Committee for 1944-45 and was entitled to a sitting fee every time he attended the Committee Meetings. This membership is an office of profit under the Government of India and as such the respondent is disqualified under Article 191 of the Constitution to stand for election.

(d) The respondent is a holder of a mining lease from the Government for working out a mica mine within the forest area of Kurupam and as such he was disqualified under section 7(d) of the Act.

(e) The respondent, his agents and supporters made false statements against the petitioner knowing them to be false in relation to the personal character and conduct of the petitioner and also of his candidature. In the list of particulars originally annexed to the petition it was mentioned that the false propaganda related to the alleged misappropriation of funds said to have been collected from the cartmen of Parvatipur for a public purpose. This particular was later amended as per M.P. No. 1 of 1956 by adding that the propaganda carried on was under the title *"Butaka Pracharulaku Javabu"* and that the petitioner was also slandered by alleging unsocial and disrespectable acts, such as black-marketing in cement and iron tyres. Propaganda was also carried on that the petioner and his party wished to make the people drunkards by getting toddy shops reopened. The respondent used a live elephant in his procession for his propaganda work as his election symbol was an elephant. It was falsely alleged that the petitioner's men cut the trunk, ears and tail and blinded the eyes of the elephant while it was being taken in a procession. Hindus look upon the elephant as *Gaja Lakshmi* and this false propaganda prejudiced the prospects of the petitioner in the election. Further, the respondent was representing to the voters that he would rejoin the Congress if he succeeded in the election. He was representing at the same time to the Socialist Party that he would remain Independent even after the succeeded in the election. The respondent also misrepresented to the voters that he is the junior Rajah of Kurupam though by the date of the elections the Estate had been taken over by the Government. All this false propaganda unduly influenced the voters against the petitioner.

(f) Election meetings and processions of the petitioner were systematically disturbed by the respondent and his men. Many dead and absentee voters were impersonated at the instance and connivance of the respondent's agents in favour of the respondent. No particulars of such impersonation were given in the list of particulars originally annexed to the petition. But the petioner gave further particulars in his petition M.P No. 18 of 1956 which was allowed, The details will be discussed later.

(g) Village Karnams were engaged by the respondent for canvassing purposes. Though the list of particulars annexed to the petition did not give any details of this, particulars were given in M.P. No. 1 of 1956 which was allowed.

(h) The leaflets, placards and posters of the respondent do not show the names of the publishers.

(i) The return of the election expenses incorrect. The real expenditure incurred by the respondent was far in excess of the amount allowable under the rules framed under the Act. Receipts of contribution from others were not shown in the election return. Use of cars was also not correctly accounted for.

(j) The respondent had indulged in acts of direct and indirect bribery. The appointment of Sri P. Satyanarayana on a high salary of Rs. 80 per month is itself an act of bribery. Many payments were made to persons under the guise of remuneration to agents, though in fact they constituted bribes to them to support his candidature. Bribes were also given to many voters of the labourer class.

(k) Voters were conveyed to the polling stations by fleets of bandies engaged at respondent's cost and also by the spare bus of Jai Shankar Bus Service Company.

In view of the aforesaid reasons, the petitioner prays that the election of the respondent be declared void and that he should be declared duly elected in his place.

3. The respondent alleged in his counter that in the first election held in 1951 under the New Indian Constitution the petitioner opposed the respondent's brother for the same Constituency and was defeated by an overwhelming majority of 17,973 votes. Subsequently, the respondent's brother died and there was a bye-election in 1952. The petitioner and the respondent were the contesting candidates in the said election and in that election also the petitioner was defeated with a huge difference of 12,000 and odd votes. The petitioner contested a third time in this election and was again worsted with a difference of 9,369 votes. Having been frustrated in his attempts at these three elections wherein the electorate by a huge majority disapproved his candidature, the petitioner took to this method of gaining his ends by filing this election petition on false and frivolous grounds. The respondent has denied all the allegations made against him as regards the disqualifications and also corrupt practices. He denied that at the appropriate dates there was any subsisting contract or interest in the procurement agency obtained by him from the Government. He ceased to be a procuring agent as early as 13th November 1951. It is not true that he has yet to deliver any quantity of rice or paddy to the Government under his he procurement agency or that the Collector demanded him to deliver any such goods. He denied that there were any outstanding obligations between his sub-agent Gudla Satyanarayana and the Government. He also pleaded that the dealings between Gudla Satyanarayana and the Government have no legal bearing on this election dispute. The lease of salt pan lands in favour of the minor son of the respondent's brother was not for the benefit of this respondent. The respondent and the minor divided their properties long prior to the election and they are members of a divided family. The mining lease is denied. The membership of the Zonal Railway Users' Consultative Committee is not an office of profit. Further, he ceased to be a member of such committee by the date of the nomination and election. The allegations of false propaganda against the petitioner were all denied. He denied that any meetings of the petitioner were disturbed. Allegations about impersonation, employment of village karnams for canvassing purposes, the conveyance of voters to the polling stations by bandies or by Jai Shankar spare bus, the bribing of the voters or agents were all denied. He also pleaded that the election return filed by the respondent is true and correct and nothing more than what was mentioned therein was spent for his election purposes. It is further pleaded that the respondent had taken all possible and reasonable means for the prevention of the commission of corrupt and illegal practices at the election.

4. The following issues arise for consideration:—

1. Whether the respondent had at the time of the filing of his nomination any share or interest in a contract for the supply of goods or for the performance of any services undertaken by the State Government by reason of his having been a procurement agent with the Collector of Srikakulam?

2. Whether a full and entire discharge of all the mutual obligations between the respondent and the Government incurred under the procurement agency had taken place by the date of the nomination?

3. Whether the respondent had any interest in the salt contract entered into by the respondent's brother's son with the Government by the date of the nomination?

4. Whether the respondent was a member of the Zonal Railway Advisory Committee by the date of the nomination? If so, does this disqualify his nomination?

5. Whether there was any mining lease by the respondent with the Government at the time of the nomination? If so, does it disqualify his nomination?

6. Did the respondent commit any of the corrupt practices alleged in para. 7 of the petition and the list of particulars mentioned in the annexure?

7. Whether the election was materially affected for all or any of the reasons mentioned in the petition?

8. To what relief is the petitioner entitled?

5. *Issues* 1 *and* 2.—These are the two most important issues, which have been vehemently pressed by the petitioner and on which a large volume of evidence has been let in by both sides. These issues relate to the disqualification of the respondent on account of the alleged interest he had at the time of the nomination in a contract entered into by him with the Government coming within the mischief of s. 7(d) of the Act. Before referring to the evidence in the matter, it is necessary to set out the respective contentions of the parties. The respondent was appointed a wholesale dealer by the Government under the Madras Foodgrains (Intensive Procurement) Order of 1950 for the purchase, storage and distribution of notified foodgrains. He executed two agreements, Exs. A98 and A99. The petitioner contends that by the date of the nomination, *i.e.*, 3rd January 1955, there were certain outstanding obligations to be performed by the respondent under the contract. The respondent had yet to deliver to the Government 222 maunds 56 pounds of rice and 52 maunds of paddy from out of the procured stocks. The security deposit of Rs. 1000 made by the respondent was also not returned by the Government to the respondent by the date of the nomination and as such he had a subsisting interest in the contract. The respondent contends that the transaction between him and the Government as a procuring agent is not in the nature of a contract, that none of the ingredients of a contract are present in this transaction, that even otherwise, there was no subsisting contract by the date of the nomination, as the relinquishment of his agency was accepted by the Collector, Srikakulam, under Ex. B8 as early as 13th November 1951. He also contends that he need not deliver or account for any stocks to the Government.

6. Section 7, clause (d), of the Act runs as follows:—

> "A person shall be disqualified for being chosen as and for being a member of either house of Parliament or of a Legislative Assembly or of the Legislative Council of a State....."
>
> (d) If, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to or for the execution of any works or for the performance of any services undertaken by, the appropriate Government."

7. Three kinds of contracts with the Government are mentioned in this section, *viz.*, (1) contract for the supply of goods, (2) contract for the execution of any works undertaken by the Government, and (3) performance of services undertaken by the Government. Exs. A98 and A99 are the two agreements entered into by the respondent with the Government of Madras. Ex. A99 is the earlier one executed in November 1949. It was executed in accordance with the provisions of the Madras Foodgrains (Intensive Procurement) Order of 1948. But the Control Order was later superseded by a new Order in 1950 and a fresh agreement Ex A98 dated 7th May 1951 was executed under the Order of 1950. Ex. A98 may be deemed to have superseded Ex. A99. The terms of Ex. A98 are therefore relevant for purposes of this case. Under this agreement the respondent is to purchase notified foodgrains in the areas allotted to him at the rates prescribed by the Government from time to time, store them in proper godowns and be responsible for their safe custody and sell them to the persons to whom he is directed to sell at the rates prescribed by the Government from time to time. Clause (8) says that the Government do not hold themselves responsible for any loss that might arise in the disposal of stocks. Clause (9) provides that the

respondent is to deposit Rs. 1000 for the due fulfilment of this undertaking. The Collector or the District Supply Officer can forfeit in full or in part this deposit for any breach of the provisions of this agreement.

8. It is contended by the respondent that this transaction does not partake of the nature of a contract at all, that the essential ingredients of a contract are not in evidence in this case, that the respondent alone had financed the business, that the profit and loss was entirely his, that the stocks purchased belong to him alone and not to the Government, that there were no mutual obligations between him and the Government, that the agreement was not supported by any consideration, that at the worst he was a mere licensee from the Government and that, in any view, it was not a contract coming under any one of the three kinds mentioned in s. 7(d) of the Act.

9. The first point to be decided is, whether this transaction satisfies all the elements of a contract as defined in the Contract Act and if so, whether it comes under one or other of the three types of contracts mentioned in s. 7(d) of the Act. This transaction was entered into under the provisions of the Madras Foodgrains (Intensive Procurement) Order of 1950. This is an order passed by the State Government under the Central enactment—The Essential Supplies (Temporary Powers) Act of 1946. During the second World War and in the subsequent period when there was an acute shortage of rice and other foodgrains in the country, the Government took upon themselves large powers with regard to the production, supply, transport and distribution of foodgrains throughout the country. Statutory rationing was also introduced in several places. The Essential Supplies (Temporary Powers) Act, 1946 and the various Foodgrain Control Orders passed under it gave necessary powers to the Government in that behalf. The Foodgrains Intensive Procurement Orders were passed with a view to see that there was no hoarding of foodgrains by the producers or the dealers. With that end in view, the Government appointed wholesale dealers or agents on their behalf for purchasing these foodgrains and distributing them to the public as per the directions given by them. The Government gave to the wholesale dealers a monopoly for such purchase and distribution and no others can deal in this business. The rates at which they are to purchase and the rates at which they are to sell leaving them a sufficient margin of profit to the dealer were also fixed by the Government. There is, therefore, no doubt that the consideration for the Agent to enter into this contract is the monopoly that has been given to him by the Government in this business. Even though the stocks were purchased by the agent at his own cost, and even though the stocks belong to him alone and the Government have nothing to do with the profit and loss in this transaction, yet, in view of the monopoly that was given to him by the Government it cannot be said that this transaction is not supported by consideration.

10. In *A. J. Arunachalam* v. *Election Tribunal, Vellore and others* (1) His Lordship Justice Subba Rao, as he then was of the Madras High Court, in a case arising under the Madras Yarn (Dealers) Control Order, 1948, which was an order passed under the Essential Supplies (Temporary Powers) Act, 1946, held that similar monopolies given to yarn dealers to lift the bundles from various Mills and to distribute the same in accordance with the conditions agreed upon constituted a valid contract between him and the Government and that there was valuable consideration for the same.

11. In *V. V. Ramaswami* v. *Election Tribunal, Tirunelveli, and others* (2) His Lordship Justice Venkatarama Aiyar of the Madras High Court as he then was, in a case, arising under the Foodgrains Control Order held as follows:—

> "Control of foodgrains was a subject which was within the competence of the Provincial Legislature under the Government of India Act, 1935. During the period of war it became necessary for the Central Government to take over control of all the essential supplies and that was done under the Defence of India Rules. After the termination of the hostilities, it was considered expedient in the public interest to continue those controls for such time as may be necessary and for that purpose, the British Parliament conferred on the Central Legislature certain powers under 9 and 10 George VI, Chapter 9. In exercise of those powers, the Indian Legislature passed the Essential Supplies (Temporary Powers) Act XXIV of 1946. Under section 3 of the Act, the Central Government is authorised to issue notifications

(1) 9 Election Law Reports, page 471.

(2) 8 Election Law Reports, page 233.

for the production, supply and distribution of the essential commodities. Section 4(b) of the Act provides that the Central Government may by a notified order direct that the powers to make orders under section 3 shall in relation to such matters and subject to such conditions if any as may be specified in the directions be exercisable also by such State Government as may be specified in the direction. It is under the authority conferred by this section that the State Government has issued control orders with reference to the foodgrains. The contracts in question were entered into under the provisions of those control orders. Thus they clearly relate to services undertaken by the State Government."

12. It is, therefore, clear from the above two decisions that the transaction in question fulfils all the ingredients of a contract and that it was entered into for the performance of services undertaken by the State Government. It is unnecessary to consider whether this transaction comes under the other two types of contracts referred to in s. 7(d) of the Act. It is contended by the learned advocate for the respondent that this performance of services by the Government was purely voluntary and not under any statutory or enforcible obligation by the Government and that the word 'undertaken' in s. 7(d) relates only to statutory obligations. A similar contention was raised in *Sankara Pandia Nadar v. V. V. Ramaswami and others* (1) before the Election Tribunal, Tanjore, and it was negatived by the Tribunal. This case went up in appeal to the Madras High Court and it was reported in 8 *Election Law Reports* 233 above referred to; and His Lordship Justice Venkatarama Aiyar confirmed the judgment of the Tribunal. The contentions that the respondent was a mere licensee and that there were no mutual obligations between him and the Government were also held against the respondent by His Lordship Justice Subba Rao in the case reported in 9 *Election Law Reports* 471, above referred to. There can, therefore, be no doubt that Ex. A98 is a contract for the performance of the services undertaken by the Government.

13. The next point for consideration is, whether this contract was subsisting by the date of the nomination, i.e., 3rd January 1955, and, in any view, whether the respondent had any obligations to perform under the contract at the appropriate dates. Ex. A98 as per terms therein would expire by 31st December 1951. Even before the expiry of that date the respondent sent in his resignation or relinquishment of his agency to the Collector, Srikakulam, and he accepted the same under Ex. B8 dated 13th November 1951. Further, the controls over foodgrains were lifted by the Government on 15th June 1952 and the Foodgrains Control Order under which Ex. A98 was entered into was rescinded from that date. It is contended by the respondent that for the above reasons there was no subsisting contract between him and the Government by the date of the nomination. The petitioner admits that there was no subsisting contract by the date of the nomination in the sense that there were no future obligations to be entered into and performed by the respondent but he contends that under Ex. A98 the respondent had yet to perform certain obligations and that therefore he has still got a subsisting interest in the contract. He contends that the respondent has yet to deliver certain quantities of rice and paddy procured by him under Ex. A98, that he has also to get back his security deposit of Rs. 1000 from the Government by the date of the nomination and that unless and until all these matters have been finally settled the respondent must be deemed to have still an interest in the contract and that his case is therefore hit at by s. 7(d) of the Act. The petitioner relies upon *A.I.R.* 1931 *Calcutta* 288. This is a case arising under s. 57 of the Bengal Municipal Act. The plaintiffs in this case sought to be elected as Commissioners of the Municipal Council of Dacca. This was objected to on the ground that the fathers of the plaintiffs owned a joint firm which was dealing in bricks and other materials of a like kind, that this firm had supplied certain road material to the Dacca Municipality, that their bills have not yet been settled and that they were disqualified for standing for election. The plaintiffs contended that they have performed their part of the contract by supplying the material contracted for even before the date of nominations, that there were no further obligations on their part to be performed, that the bills also were passed by the Chairman, but that on account of some financial difficulty the Municipality had not made the payments in full. They contended that as they had no further obligations to perform, there was no subsisting interest in the contract and that therefore they were not hit at by the provisions of s. 57 of the Bengal Municipal Act.

14. Their Lordships discussed several English and Irish cases on this point and held that the contract had not terminated and that the plaintiffs were interested

(1) 8 Election Law Reports 317.

in it and consequently they were disqualified from being selected. The principle on which this case was decided is that when the plantiffs had nat realised the fruits of their labour by receiving payment for the goods supplied by them by the date of the nomination they must be considered to be interested in the contract.

15. In *Chatturbhuja Vittaldas v. Moreswar Parushram and others* (1) it was held that a contract for the supply of goods does not terminate merely by the goods being supplied but that it continues in being till it is fully discharged by performance on both sides. The facts of this case are as follow. One Chatturbhuj Jasani, one of the candidates for election, was a partner in the firm of Moolji Sikha & Company, which is a firm of *Beedi* manufacturers. The Central Government was interested in stocking and purchasing *Beedies* for sale to its troops through its canteens. Accordingly it placed two of the brands of *Beedies* manufactured by this firm on its approved list and entered into an arrangement with the firm under which the firm was to sell and the Government was to buy from the firm from time to time these two brands of *Beedies*. This is a case of a continuing contract where so soon as each order was placed and accepted the contract arose. The disqualification alleged in this case is that Chatturbhuj Jasani had an interest in the contract or series of contracts for the supply of goods to the Central Government on the relevant dates and that the obligation under the several contracts still continued. It was contended that the contract on behalf of the company was fully executed and what remained was only to receive payment for the goods supplied and that the relationship between the firm and the Government was one of a creditor and a debtor. Their Lordships did not agree with this contention. They held that there was always a possibility of the liability being disputed before actual payment is made and the vendor may have to bring an action to establish his claim to payment. Their Lordships approved of the decision in the case reported in *A.I.R.* 1931 *Calcutta* 288. The underlying principle in this disqualification is to maintain the purity of the Legislature and to avoid a conflict between duty and interest. The person elected should be beyond all temptation to influence the Government in recovering any money due to him from them. We have, therefore, to see as a question of fact, whether by the date of the nomination there were any pending obligations between the respondent and the Goverhment, which would, in effect and in substance, conflict with the duties of the respondent as a member of the Legislature if he were to be elected.

16. It is necessary to set out a few facts to arrive at a decision on this matter. On 1st June 1950 the District Supply Officer, Parvatipur, made a surprise inspection of the Victory Mills of Parvatipur, where the respondent stocked his procured goods and found 444 bags of paddy and no stock of rice at all. According to the procurement account books, there ought to be 280 bags of paddy and 88 bags of rice. Each bag of paddy contains two maunds and each bag of rice contains 2½ maunds. 88 bags of rice would come to about 220 maunds. It is the case of the petitioner that these 220 maunds of rice have not been delivered to the Government nor accounted for by the respondent and that they still remained with him by the date of nomination. The respondent contends that there was really no actual shortage in either rice or paddy at the time of the check on 1st June 1950, that out of the 444 bags of paddy found by the Taluk Supply Officer on 1st June 1950, 164 bags were shown as having been milled into rice as the Government were pressing them to show progress in milling, that in fact those 164 bags of paddy were not milled at all, that if they were milled they would yield 220 and odd maunds of rice which is equivalent to 88 bags of rice and that was the reason why there was an excess of 164 bags of paddy and deficit of 88 bags of rice. It is the case of the respondent that out of the 444 bags found by the Taluk Supply Officer, 164 represented the rice yield of the 88 bags shown in the accounts. Therefore, there was really no actual shortage of rice. A number of documents were filed by both sides in proof of their respective contentions.

17. On 1st June 1950, the Tahsildar of Parvatipur made a surprise inspection of the depot of the sub-agent of the respondent Gudla Satyanarayana at Gumma Lakshmipuram and seized from him 254 bags of paddy alleging that they were in excess of his procured stocks. On 9th June 1950 Gudla Satyanarayana sent a letter Ex. B5 to the respondent explaining the stock position and complaining that the seizure of the Tahsildar was illegal. He stated therein that out of 1010 bags of paddy procured by him, he sent 800 bags of paddy to Parvatipur. Of this 710 bags were sent to the mill and 90 bags were kept at his house at Parvatipuram. Out of the 710 bags, 520 bags were milled and 200 bags of rice were sent to Anakapalli and the remaining 220 maunds 28 pounds of rice and 190 bags of paddy remained in the mill. Out of 210 bags of procured paddy in his house at

(1) 1954 S.C. 236.

Gumma Lakshmipuram he issued 20 bags to Co-operative Stores and the remaining 190 bags were with him. In addition to these, he had with him 64 bags of paddy which were his own personal stock and which he had kept with him for cultivation expenses and for other domestic purposes. The Tahsildar took away all these 254 bags. He further stated in Ex. B5 that as the excess stock in paddy and deficit in rice in the Victory Mills was due to the non-milling of paddy which resulted in a yield of 220 maunds 26 pounds of rice, the discrepancy may be adjusted and the matter set right.

18. Ex. B4 is the office copy of the letter written by the respondent's brother dated 5th September, 1950 requesting the District Supply Officer to release the paddy at Parvatipuram pending further enquiry, as the stuff was getting deteriorated due to rains. Exs. B27 and B28 dated 2nd September, 1950 and 5th September, 1950 are two telegrams from the Supply Officer to the respondent directing the respondent to get the entire procured paddy remaining with him milled for local consumption. On 12th September, 1950 the respondent's brother sent a letter to the Tahsildar explaining the reasons for the discrepancy of stocks as found on 1st June, 1950. This letter is an enclosure to Ex. A115. Ex. A6 dated 25th October, 1951 is the explanation given by the respondent's brother about the discrepancies in stocks as discovered on 1st June, 1950. This is practically the same as the letter dated 12th September, 1950; and also as Ex. B5. Ex. A7 which is the same as Ex.B8 dated 13th November, 1951 is the acceptance of the resignation of the respondent as a procuring agent. It was mentioned therein that the resignation was accepted and that the security deposit will be refunded after his procurement accounts were checked and necessary certificates obtained from the Taluk Supply Officer. Ex. A9 dated 1st December, 1951 is a letter of the respondent endorsing the explanation given by his brother in Ex. A6. Ex. B34 dated 29th April, 1952 is the letter of the Taluk Supply Officer to the Dewan of the Kurupam Estate stating that the Collector wanted clarification of some facts before the refund of security deposit is made and that he would come and personally discuss the matter with him. Ex. B9 dated 16th May, 1952 is the charge memo levelled against the respondent for the excess and deficit of stocks found at the Victory Mills on 1st June, 1950. Ex. A13 dated 27th May, 1952 is the explanation given by the respondent repeating what he stated in Ex. A7 and the earlier letter dated 12th September, 1950. Ex. B7 dated 11th November, 1952 are the proceedings of the Collector, Srikakulam, dropping the charges framed against the respondent. It is, therefore, clear from the above series of documents that the deficit and excess of stocks found on 1st June, 1950 were not really deficit or excess, that there was really no stock of 220 maunds 56 pounds of rice lying with the respondent for being accounted for by him, that the explanation given by the respondent was accepted by the Collector and the charges dropped as against him. To the satisfaction of both parties there was, therefore, no outstanding obligation on the part of the respondent to account for 220 maunds 26 pounds of rice.

19. But in 1953 this matter which had been finally closed by 11th November, 1952 was raked up again. This arose in connection with the refund proposals of the respondent's security deposit. By Ex. B35 dated 15th April, 1953 the Sub-Collector addressed a letter to the Dewan of the respondent's brother to produce the procurement registers before him for scrutiny, apparently for sending proposals to the Collector to refund the security deposit. On 26th March, 1953 the Dewan requested the Sub Collector by Ex. B36 to communicate to him the order about refund. Evidently the books would have been checked by that date. The Sub Collector returned Ex. B36 with an endorsement that the refund proposals were being submitted to the Collector and that orders may be awaited. On 6th August, 1953 under Ex. B37, the Sub Collector wrote to the respondent to send the sales tax clearance certificate as it was required by the Collector in connection with the refund of the security deposit of Rs. 1000. It is only after the Collector was satisfied that there was nothing further to be performed by the respondent under the terms of the contract that the sales tax clearance certificate would be called for before the security deposit is refunded. Legally, production of sales tax clearance certificate is not a term of the contract Ex. A98. The respondent sent the sales tax clearance certificate under letter dated 26th August 1953 (Ex. B13). On 1st December, 1953 the Sub Collector wrote to the respondent stating that the deposit could not be refunded pending disposal of the criminal cases filed against Gudla Satyanarayana. The propriety of this order will be discussed later.

20. The criminal cases were disposed of on 30th April, 1954 discharging the accused. Exs.A174 and A176 are the judgments therein. On 27-7-1954, the Revenue Divisional Officer, Parvatipuram, wrote to the Collector to sanction the refund of the deposit (Ex. A16). The Collector appears to have asked him in what form the security deposit was lying and the Sub Collector wrote Ex. A19 dated 24th September, 1954 stating that the amount was under fixed deposit receipt No. 13979 and soliciting instructions for refund.

21. While the correspondence was at this stage, in November, 1954 the then Andhra Legislative Assembly was dissolved by the Governor and fresh elections were ordered. Intending candidates were on the alert. During November, there were proposals for the merger of some of the political parties, *viz.*, the Congress, the Krishik Lok and the Praja Parties, into a United Congress Front. Candidates were being set up under the ticket of the United Front as against the other parties. At this crucial stage, an express memo Ex. B3 dated 1st December, 1954 was sent by the Revenue Divisional Officer to the Tahsildar, Parvatipuram, asking him to report as to how and under what orders the stock of 220 maunds and 56 pounds of rice and 52 maunds of paddy were disposed of by the respondent. The Revenue Divisional Officer addressed another letter dated 17th December, 1954 Ex. B2 to the respondent asking him for explanation of the above stocks. It may be remembered that in the previous bye-election in 1952 the respondent and the petitioner were the contesting candidates. In that bye-election, before the Returning Officer at the time of the scrutiny of the nominations, the petitioner took up the self-same objection regarding the disqualification of the respondent arising out of his procuring agency. This objection was over-ruled by the Returning Officer [*Vide* Exs. B19, B19 (a) and B19 (b)

22. At the bye-election the petitioner contested on the ticket of the Krishik Lok Party and the respondent as a Congress candidate. Now that these two parties have merged into a United Front, both the petitioner and the respondent appear to have sought for a ticket under the United Congress Front. At this stage, Exs. B2 and B3 come into the picture. So far as the stock of rice of 220 maunds 56 pounds is concerned, the matter was fully enquired into and the charges were finally disposed of. It is surprising as to why the same question was reopened in Exs. B2 and B3.

23. As regards the 52 maunds of paddy shown under date 15th October, 1950 in Ex. A109(a), there was never any question as to how this paddy was disposed of. This item was picked up from procurement register of 1950, Ex. A109. It shows that there should be a stock of 51 maunds 61 pounds by 5th October, 1950 and adding the last year's balance of 20 pounds, the stock comes up to 52 maunds or 26 bags of paddy. It may be noted that the respondent's resignation as a procuring agent was accepted on 13th November, 1951. It is in evidence that on 15th October, 1950, Ex. A109 and other procurement registers were taken by the Supply Officers in connection with the enquiry as regards the charges framed against the respondent. Between 15th October, 1950 and 13th November, 1951 a fresh set of accounts must have been maintained. After the procurement work is over, the procuring agent has to give away all these registers to the Government and they would therefore be with the Government alone. These books have not been put in evidence in this case. They might show how these 52 maunds were carried over to the succeeding registers and how the stock was disposed of.

24. Further, when the charges were framed against the respondent under Ex. A13 dated 27th May, 1952, this register Ex. A109 was with the Supply Officers and they would have checked this book with the subsequent registers completely. If really these 52 maunds of paddy were still accountable by the respondent, they would have asked for it and directed the respondent to explain as to how the stock was disposed of. If no proper explanation had been given, charges would have been framed against him for this item also. But in Ex. A30 the charges related only to 220 maunds 56 pounds of rice. This is a matter pertaining to the year 1950. In 1954, just on the eve of the elections, the respondent was asked as to how he disposed of 52 maunds of paddy found in a book of the year 1950 when he was not in possession of any of the procurement registers. As a matter of fact, under Ex. A15 dated 30th December, 1954 the respondent sent his explanation to Exs. B2 and B3. This was accepted by the Collector and the refund of deposit was made on 30th June, 1955 under Ex. B15. Ex. B15 is, no doubt, after the elections, but it probablises the fact that the queries in Exs. B2 and B3 were unfounded.

25. It has been argued by the respondent's advocate that Exs. B2 and B3 were inspired documents got up at the instance of interested parties in the elections just to keep the fire burning till the elections were over and thus give a handle for objections to be taken before the Returning Officer. This argument is not without force. To give a more charitable construction to it, it may be that the clerks in the Collector's Office who did not probably know the previous correspondence in the matter from 1950 to 1954 have given a wrong lead to the officers concerned which resulted in Exs. B2 and B3. Whatever it be, it is clear that Exs. B2 and B3 were issued under mistaken impressions and that by that date there were no stocks with the respondent for which he had to give any explanation.

26. After the check on 1st June, 1950, the Supply Officer directed the respondent to get the paddy with him completely milled for local consumption—Exs. B27 and B28. From Ex. A110(a) it is seen that 1040 maunds or 520 bags of paddy were issued for the milling. Ex. A108(a) shows that the yield in rice for this quantity is 720 maunds 56 pounds. But the entire paddy was not as a matter of fact milled, though shown in the accounts. 164 bags of paddy was not actually milled. It was in the shape of paddy alone, though shown in the registers as the corresponding stock of rice. 164 bags of paddy would yield about 226 maunds 56 pounds of rice. This would be equal to 88 bags of rice at the rate of 2½ maunds. It is this alleged deficit of rice that was pointed out by the Taluk Supply Officer on 1st June, 1950 but this deficit was in the form of 164 bags of paddy, which was included in 444 bags found on 1st June, 1950. While there ought to be 280 bags of paddy as per accounts, there were 444 bags in its stead. After receipt of Exs. B27 and B28, 444 bags or 888 maunds roughly were issued for milling under Ex. A110(b). The yield for this is shown as 600 maunds under Ex. A108(b). The entry Ex. A108(a), which showed 720 maunds 56 pounds as rice milled is wrong as shown above. It ought to be only 500 maunds. After the mistake was detected on 1st June, 1950 this entry ought to have been corrected. But it was not so done, presumably because the matter was under enquiry by the Officers concerned. But from Exs. A110(b) and Ex. A108(b) it is seen that the entire 444 bags were shown as having been milled and that 600 maunds of rice was realised. There is, therefore, a duoble entry of 220 maunds 56 pounds. That is why we find that a balance of 220 maunds 56 pounds by 5th October, 1950 was still shown in the registers. If Ex. A108(b) were properly corrected or in Ex. A110(b) if it were shown that only 444 *minus* 164-280 bags only were milled and its yield alone noted in Ex. A108(b), there would have been no balance by 5th October, 1950. Ex. B26(a) shows that 600 maunds of rice realised by milling 444 bags were distributed to several depots between 18th September, 1950 and 26th September, 1950. This mistake was accepted by the Collector and the charges were dropped. There is, therefore, no doubt that the respondent need not account for 220 maunds 56 pounds of rice or the 52 maunds of paddy.

27. It is next contended by the petitioner that the respondent deposited a sum of Rs. 1000 as security for the due performance of his contract under Ex. A98 and that the said sum was not returned to him by the date of the nomination but was returned only after Ex. B15 dated 30th June, 1955, and as such, the respondent had a subsisting interest in the contract by the date of the nomination. Under Ex. A98, this sum of Rs. 1000 was deposited for the due performance of the contract. The Collector and the District Supply Officer had power to order forfeiture of all or any portion of this amount for breach of any of the terms of the agreement. It is, no doubt, true that the refund of the deposit is one of the terms of the contract. But its forfeiture depends upon the non-observance of any of the terms of the contract. If there are still any obligations to be performed by the respondent and if such obligations have not been performed, then alone the question of forfeiture arises. We have held in the above paras that even by 11th November, 1952 when the charges framed against the respondent were dropped, there were no outstanding obligations to be performed by the respondent under the contract. He did all that he had to do. There were no stocks to be delivered or accounted for by him. What remained was only the refund of deposit. Exs. B35, B36, B37, B30, A60, A70 and A19 show that the Sub Collector was making repeated proposals for refunding the security deposit of the respondent. The respondent was asked to produce the sales tax clearance certificate and it was also produced. The Collector asked the Sub Collector in what form this amount was in deposit and the Revenue Divisional Officer replied that it was in the form of a fixed deposit. Actually the matter was ripe for payment of the amount by the date of Ex. A19, when a little later Exs. B2 and B3 reviewed the old question of excess and deficit stocks alleged to be lying with the respondent. The respondent gave explanation to Exs. B2 and B3, which was nothing more than what he had given before the charges were dropped against him. On receipt of that explanation the amount was refunded after 30th June, 1955 which, of course, is after the date of the nomination. We have already held that Exs. B2 and B3 were either mistakenly written in ignorance of the previous correspondence or that they were inspired by interested parties just on the eve of the election. At any rate, there was nothing to be accounted for by the respondent after Ex. B10. The delay in refunding the amount was due mainly to the slow moving of the administrative machinery and not because there was really any dispute between the Government and the respondent as regards any mutual obligations to be performed under the contract. Ex. A112, which was the form under which security deposits ought to be recommended for refund, made mention of 220 maunds 56 pounds of rice and 52 maunds of paddy. Yet, the Sub Collector recommended for the refund of deposit stating that the dispute about those items had been set at rest when the charges against the respondent were dropped.

28. The very fact that the Government without any demur have refunded the deposit, though after the election on receipt of the explanation under Ex. A115, shows that there was really no substance in the points raised in Exs. B2 and B3 and that the queries put therein have not got even a shadow of a basis for getting any information.

29. The petitioner relied upon *Chatturbhuja Vittal Das* v. *Moreswar Parsuram* (1), the facts of which were set out above, and contended that as refund of Rs. 1000/- was a term of the contract and as it was not in fact returned by the date of the nomination, the respondent must be deemed to have still some interest in the contract. In this case, this sum of Rs. 1000/- deposited with the Government was only a security for the due performance of the contract and the refund of it would not represent any payment to be made by the Government for the goods supplied by the respondent. Apart from that, the accounts between the respondent and the Government had been settled as early as Ex. B10 dated 11th November, 1952 and the delay in refunding this amount was not because there was any possibility of the liability of the respondent being disputed before the refund was made but because of the delay in the office in getting some formal information regarding the refund. If we exclude Exs. B2 and B3 from this long series of correspondence between the parties, it is clear that there is not even a semblance of a dispute between the parties as regards any obligations to be performed by the respondent under the contract for any payments to be received by him for goods supplied by him. We are, therefore, of opinion on the question of fact that the delay in refunding this amount is not because of any pending dispute between the respondent and the Government but because of the slowness in the movement of the administrative machinery. As such, the non-payment of the deposit by the date of the nomination does not mean that by that date the respondent had any interest in the contract for the performance of services undertaken by the Government.

30. The object of s. 7(2)(d) of the Act is obviously to avoid a conflict between duty and interest. But it should also be borne in mind that this is a penal provision which disqualifies a candidate from contesting a seat in the Legislature. While interpreting such a provision, one ought not to extend it beyond legitimate limits and give scope for an abuse of its real intent and purpose. Here, as we have held *supra*, there were no mutual obligations between the Government and the respondent except the formal order of refund of deposit. No question of conflict between duty and interest would arise if the respondent were elected to the Legislature. We, therefore, hold that the non-refund of Rs. 1000/- by the date of the nomination under the circumstances of this case is not a disqualification under s. 7(2)(d) of the Act.

31. It is next contended by the petitioner that the Tahsildar left 26 bags of paddy with Sri Gudla Satyanarayana, the sub-agent of the respondent, when he seized certain stocks from his depot on 1st June, 1950 and that this quantity was not accounted for either by the respondent or the sub-agent. It is seen from the documents filed in the case that 254 bags of paddy were seized on 1st June, 1950 from the depot of the sub-agent at Gumma Lakshmipuram and that out of these, 190 bags represented the procured stocks and the balance of 64 bags belonged to the sub-agent, which he reserved for his domestic use. Out of these 254 bags, 26 bags weighing 58 maunds of paddy were delivered at a cost of Rs. 464-5-4 to the Co-operative Society, Gumma Lakshmipuram and the balance was given to Sri Balaramaswami for Rs. 3614-7-0. These amounts were kept in the Revenue Deposits. The sub-agent contended that the seizure of the above stocks was illegal and claimed the value of these bags as per the amounts covered by the Revenue Deposits. Criminal cases were filed against the sub-agent under the Foodgrains Control Order; but they were thrown out on 30th April, 1954 (*vide* Exs. A174 and A176). After they were thrown out, there was again a protracted correspondence between the sub-agent and the Revenue Officials and after making certain deductions for the sums due by the sub-agent towards his income-tax and such other dues, the balance was paid to the sub-agent sometime in April or May 1955. A perusal of the following exhibits reveal the above facts, *viz.*, Exs. A4, A45 to A58(a), A123 and A132 to A135.

32. It was the case of the sub-agent from the beginning that 254 bags of paddy were seized from him on 1st June, 1950, but Ex. A56 dated 10th June, 1954 and Ex. A133 dated 24th June, 1954, which are reports sent by the Tahsildar to the Collector and the Revenue Divisional Officer show that the paddy seized from the sub-agent on 1st June, 1950 was 250 bags. In Ex. A133, 250 appears to

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have been corrected into 254 with a pencil. Whatever it may be, this difference in the number of bags has very little bearing on the point in question. It is argued for the petitioner that from the earliest report of the sub-agent, Ex. B5, it appears as though 26 bags of procured stock were left with him by the Tahsildar on 1st June 1950 and that this stock was not accounted for. But a perusal of the further correspondence in the case referred to above, shows that on the day of seizure (1st June 1950) the sub-agent had with him only 190 bags of procured paddy and 64 bags of personal stocks and that the entire 254 bags were taken away by the Tahsildar. The reference to 26 bags of paddy in Ex. B5 appears to relate to the difference which the sub-agent was attempting to point out between the alleged excess of 164 bags of paddy found at the Victory Mills and the 190 bags of procured stocks in his depot. Ex. B5 is not very specific to show that 26 bags were actually left with the sub-agent. These 26 bags were treated as procured stocks by the Tahsildar when he seized, and he supplied them to the Co-operative stores at Gumma Lakshmipuram, the actual weight being 58 maunds of paddy.

33. We do not, therefore, think that there were 26 bags of paddy with the sub-agent unaccounted for. Even otherwise, this stock of 26 bags, even if left with the sub-agent, would have subsequently been disposed of as per the directions of the Supply Officers. The procurement books which show the stocks and their disposals at the depot at Gumma Lakshmipuram have not been exhibited in this case. The report of the Tahsildar for the stocks seized by him on 1st June 1950 would show what exactly was the stock seized and what stocks were left with the sub-agent. The Tahsildar would have also noted in the procurement books what stocks he took and what remained with the sub-agent. These documents have not been filed. If really these 26 bags of paddy remained unaccounted for with the sub-agent, the Supply Officers would certainly have asked for the explanation of the sub-agent. No such thing appears to have been done. The natural inference from all these facts is that there were no stocks outstanding with the sub-agent for which he had to give any explanation.

34. It is next contended that the value of the stocks seized from the sub-agent was paid to him long after the elections were over and as such the sub-agent and the respondent had some subsisting interest in the contract by the date of the elections. The seizure of these stocks from the sub-agent was not for any non-observance of the terms of the contract embodied in Exs. A98 and A99 but under some penal provisions in the Madras Foodgrains Control Orders. Criminal cases were actually filed against the sub-agent and they were thrown out. The respondent is liable only for breach of any of the terms of the agreement with the Government and not for any criminal offences which the sub-agent might have committed. It may also be noted that these criminal cases were thrown out in 1954 itself, long before the date of the nomination. The value of the subject matter of the alleged offences was paid to the sub-agent, who was the accused in the case. So, the payment of this amount, whenever it may be, has no legal bearing on the question whether the respondent had any subsisting interest in the contract on the date of the nomination. We, therefore, hold under issues 1 and 2 that at the time of the filing of the nomination the respondent had no share or interest in the contract as a procuring agent for the performance of services undertaken by the State Government and that there was a full and entire discharge of all the obligations arising under the said contract by that date.

35. *Issue* 3.—It is next contended by the petitioner that the Government of India had instructed the State Governments that imports of salt from outside India have to be restricted and that it was necessary for all State Governments to take all possible steps to increase the production of salt. In furtherance of this policy the State Government leased out 300 acres of land in Kesavarapuram to the minor son of the respondent's brother for the manufacture of salt. Though the lease was in the name of the minor son of the respondent's brother, yet, it was really for the benefit of the joint family of which the respondent was a member. This lease was in force by the date of the nomination; and as such the respondent was disqualified under s. 7(d) of the Act. The respondent admits the existence of this lease in favour of the minor son of his brother; but contends that he got himself divided from his brother's family a few months after his death in 1952, that by the date of the nomination he was a divided member of the family, that the lease was entered into in favour of the minor with his mother as guardian, that he himself has absolutely no interest in the said lease. He also pleaded that in any event a lease of this nature would not come within the mischief of s. 7(2) (d) of the Act.

36. Exs. A138 to A145 and B31 and B24 are the relevant documents in this case. Exs. A138 to A145 show that an extent of 226 acres 24 cents of land was assigned to the minor Rajah of Kurupam on payment of Rs. 75/- per acre for the manufacture of salt, that a sum of Rs. 18,450/- was paid as land revenue to the Government, that the minor's mother Sobhalata Devi was recognised by the Government as the natural guardian of the minor son and his properties after the death of the respondent's brother and that the said Sobhalata Devi was corresponding with the Government Officials on behalf of the minor for obtaining the lease for the manufacture of salt. It is admitted that the lease was *ex facie* in the name of the minor son; but it is urged by the petitioner that the lease was for the benefit of the joint family of which the respondent was a member. In proof of this contention the petitioner examined no other witnesses except himself. The petitioner's evidence on this question is as follows:—

> "The salt pan lands were first assigned to the respondent's elder brother who is the Rajah of Kurupam. This was in 1951. I do not know whether it was under the lease in favour of any one prior to that. After the Rajah's death the lease lapsed and a fresh lease was given to his minor son in 1954. This minor was the proprietor of the Estate. I have no personal knowledge whether the expenses for the working of this lease was met from the income of the impartible estate or from any other funds. I have no personal knowledge whether the profits of this lease went to the account of the impartible estate or whether the respondent took any portion of them. I have personal intimacy with the respondent and his brother till 1951. I do not know whether the Rajah and his brother, i.e., the respondent, were incometax assessees individually."

37. It is, therefore, clear from this evidence that the petitioner has no personal knowledge whether the lease in favour of the minor son was really for the benefit of the respondent also and whether the respondent had really any interest in this lease.

38. On the side of the respondent, R. Ws. 6, 18 and 23 were examined to show that the respondent had no interest in this lease. R. W. 6 is the Superintendent of the Salt Factory constructed on the demised premises by the minor Rajah. He deposed that the factory belonged to the minor alone with his mother as guardian, that the mother alone was managing it and that the respondent had no beneficial interest in the said lease. R. W. 18 is a clerk under the minor Rajah. He deposed that the minor's father died in the last week of July 1952 and that within one or two months after his death the minor Rajah represented by his mother as guardian and the respondent divided all their impartible properties and that each was enjoying his share separately. Mess also was separate from that time At the time of the partition some properties were kept joint and the income from these properties was being taken half and by the minor and the respondent. The partible properties consisted of some estates also and when the Government took over those estates the compensation was paid in equal moieties to the minor Rajah and the respondent. He further deposed that the lease of salt pan lands was exclusively for the benefit of the minor Rajah and that the respondent had no right or interest in the said lease. R. W. 23 is the respondent himself. He deposed that he had absolutely no interest in the salt pan lands taken on lease from the Government, and that he was divided with his brother's son 3 or 4 months after his brother's death. He filed Ex. B31 to show that the profits on the properties kept joint were being taken in equal shares. This evidence on the side of the respondent is not in any way rebutted by the petitioner. We, therefore, hold that the respondent had no share in the lease of the salt pan lands.

39. Further, under s. 7, cl. (d) of the Act all types of contracts with the Government are not hit at by that section. The contract must come under one or other of the three heads mentioned therein. There is no evidence by the petitioner that this contract was entered into for the performance of any services undertaken by the State Government. Excepting a vague averment in the petition that in pursuance of certain instructions given by the Central Government for the increased production of salt manufacture this lease was entered into, there is no proof of it. This lease cannot, therefore, be said to be a contract for the supply of goods to the Government or for the execution of any works or for the performance of any services undertaken by the Government. In this view also this lease does not come within the 'purview' of s. 7(d) of the Act. We, therefore, hold issue 3 against the petitioner.

40. *Issue* 4.—It is next contended by the petitioner that the respondent is a member of the Zonal Railway Users' Consultative Committee on the date of the nomination, that the membership is an office of profit fetching a sitting fee to the respondent and as such he is disqualified under Article 191 of the Constitution. The respondent denies that he was a member of the above said Committee on the date of the nomination. He states that while he was a member of the former Andhra State Legislature, he was nominated to the said Committee to represent the Andhra State Legislature, that the Legislature was dissolved in 1954 and with the dissolution of the Legislature he ceased to be a member of the Committee. He further contends that his membership in the said Committee is not an office of profit under the Government. Ex. B20 is the Constitution and Rules of Business for the Zonal Railway Users' Consultative Committee. Under the constitution of this Committee a representative of the State Legislature recommended by the State Government shall be one of the members of that Committee. The tenure of office shall be for a period not exceeding two years except in cases of members of Parliament who have a tenure of one year. The Minister for Railways may terminate the tenure of office if he considers it necessary. Clause (7) of Ex. B20 reads as follows:—

> "Travel facilities and travelling allowances: Non-official members of the Zonal Committee when attending the meetings of the Committee shall be granted travelling facilities and allowances as shown below:—
>
> (1) A free first-class pass including one servant in the third class from the Railway Station nearest to the member's town of residence to the place of meeting and a similar concession for the return journey with permission to break journey *en route*
>
> NOTE:—In case the member desires to travel in air-conditioned accommodation, he will be required to pay the difference in fares between first-class and the air-conditioned accommodation.
>
> (2) If the town of residence is more than 5 miles distant from the nearest railway station, the actual *out-of-pocket expenses* for the journey between his residence and the railway station subject to a maximum of Re. 0-8-0 per mile.
>
> (3) Daily allowance as *out-of-pocket expenses* at the rate of Rs. 15/- *per diem* for the duration of the meeting.
>
> (4) An allowance of Rs. 10/- *per diem* as *out-of-pocket expenses* for any day or days spent in travelling between the railway station nearest to their town of residence and the place of the meeting and *vice versa*. This out-of-pocket allowance of Rs. 10/- will not paid for the day or days for which the daily allowance of Rs. 15/- is admissible."

Those members of the Zonal Committee who are members of Parliament (either the House of the People or the Council of States or of State Legislature) when attending meetings of the Zonal Committee or their sub-committees shall be granted travelling allowance as prescribed in para 7(1) to (4) above subject to the condition that (a) the daily allowance is not payable on any day on which the member is entitled to his daily allowance as a Member of Parliament, Member of Legislative Assembly or Member of the Legislative Council, and (b) the daily allowance is not payable to any Member of Parliament, Member of Legislative Assembly or Member of the Legislative Council who is residing at the place where the meeting of the Zonal Committee is held in which case he would be entitled to conveyance allowance not exceeding Rs. 10/-.

41. Article 191 of the Constitution reads:

> "A person shall be disqualified for being chosen as and for being a member of the Legislative Assembly or Legislative Council of the State.
>
> (b) if he holds any office of profit under the Government of India or any Government of State specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder."

The point that calls for consideration, therefore, is whether the membership of the Zonal Railway Users' Consultative Committee is an office of profit within the meaning of Art. 191 of the Constitution. The ordinary meaning of the word

'profit' is "pecuniary gain or advantage". If so, did the respondent by being a member of this Committee make any pecuniary gain or advantage. Under clause (7) of Ex. B20 what the respondent is entitled to is the grant of certain travelling and halting allowances. It is specifically mentioned therein that what he gets is the actual *out-of-pocket expenses* for the journey undertaken by him. The daily allowance given to him is also an out-of-pocket expense. A special provision has been enacted in the case of members of State Legislature to effect that the daily allowance is not payable on the days on which the member is entitled to his daily allowance as a member of the State Legislature. There is also the further restriction that if the Zonal Committee meeting is held at the place in which the member resides, he is not entitled to any daily allowance except a conveyance allowance not exceeding Rs. 10/-. All these provisions point to the conclusion that it is only to meet the actual expenditure incurred by the member in undertaking the Journeys and halting for purposes connected with the duties of the Committee that these amounts are paid. The rates offered are by no means generous. They can never be said to be emoluments by way of profit or gain for any work done by him Ex. B20 does not show that any sitting fee is given to the member. What is paid to the member is, therefore, in no sense a remuneration for the work done by him. We are, therefore, of the view that membership of this Committee is not an office of profit.

42. The respondent as representing the Andhra Legislature was nominated to the Committee when the Andhra Legislature prior to its dissolution in 1954 was in existence. Exs. A147 and A148 show that he attended the meetings held on 28-6-1954 and 18-10-1954. When the Legislature was dissolved by about the end of 1954, the respondent ceased to be a member of the Committee. He cannot represent a Legislature which was not in existence. After the new Legislature was formed, if he is to sit again in that Committee there must be a fresh recommendation by the State Government and approval by the Central Government. There is nothing to show that the respondent was again nominated by the State Government to this Committee as representing the State Legislature. From Ex. A149 we find that the respondent attended this Committee meeting on 30-6-1955. The respondent says in his evidence that he was not recommended by the State Government but as he received a notice from the Committee to attend the meeting on 30-6-1955 he attended the meeting and that he subsequently did not attend any other meeting as some one else was nominated by the State Government to this Committee as representing the Legislature. Evidently the call to the respondent to attend the meeting of the Committee held on 30-6-1955 must have been a mistake ignoring the fact that the old Legislature had been dissolved and reconstituted. The mere fact that he attended the meeting on 30-6-1955 does not confer upon him the status of a legal membership to this Committee. We, therefore, hold that by the date of the nomination the respondent was not a member of the Zonal Railway Users' Consultative Committee. This issue is found against the petitioner.

43. *Issue* 5.—This deals with a mining lease alleged to have been entered into by the respondent with the Government by the date of the nomination. This issue was not pressed by the petitioner. His advocate filed a memo to that effect. Hence this issue is found against the petitioner.

44. *Issue* 6.—Another serious ground of attack against the respondent is that he committed several corrupt and illegal practices in the course of his election campaign. They can be brought under the following heads:—

1. False propaganda.
2. Disturbances at meetings.
3. Impersonation of dead and absent voters.
4. Village Karnams working in the election for the respondent.
5. Non-mention of the name of the publisher in the leaflets of the respondent.
6. Submitting false return of election expenses
7. Bribery.
8. Conveyance of voters at the expense of the respondent.

We shall deal with each of these heads in the above order.

45. *False propaganda.*—Instances Nos. 1 to 5 mentioned in the list of particulars come under this head.

46. *Instance* 1:—It is alleged by the petitioner that the respondent and his agents carried false propaganda against him by leaflets as well as by word of mouth that the petitioner mis-appropriated the funds collected from the cartmen of Parvatipur for the purpose of agitating against the removal of cart-taxes by the Panchayat Board, Parvatipur, and that he was also slandered as having black-marketed in cement and iron tyres. This is denied by the respondent. In the original list of particulars the slander relating to black-marketing of cement and iron tyres was not mentioned, but the petitioner added these particulars by way of an amendment as per I.A. No. 6 of 1956. The leaflet in which the petitioner is alleged to have been personally slandered in Ex. A28. It is styled as "*Bootaka Prachaarakulaku Savaalu*". The passages in this pamphlet which have reference to this topic are marked as Exs. A28(a) and A28(b). At the outset, it must be mentioned that in this pamphlet there is no reference at all the slander of black-marketing of cement and iron tyres. The reference is only to cart-taxes. Ex. A26 is a pamphlet issued in support of the petitioner's candidature. In Ex. A26(a), which is a portion of Ex. A26, it was mentioned that the petitioner with the help of the public worked in matters relating to the abolition of cart-taxes etc. Ex. A27 is another pamphlet issued in support of the petitioner's candidature. Ex. A27(a) relates to the cart-taxes. The respondent admits that he had issued Ex. A28. He says that Ex. A28 was only a reply to Ex. A27 and that the petitioner's personal character was never attacked in Ex. A28. The reference about cart-taxes in Ex. A28 was only to the leaders of the Krishik Lok Party and not individually to the petitioner. He further pleads that there was no allegation of misappropriation by anyone of the funds collected from the cartmen and Ex. A28 was only a call to the public to ask for rendition of accounts from the leaders of the party.

47. This alleged corrupt practice comes under s. 123(5) of the Act, which reads thus:—

> "The publication by a candidate or his agent or by any other person with the connivance of the candidate or his agent of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate being a statement reasonably calculated to prejudice the prospects of the candidate's election."

This has been made also an offence under s. 171(g) of the Indian Penal Code. What is to be proved is that the statement made is one of the fact and not a general allegation of misconduct and the statement made must be false and also false to the knowledge of the person who makes such statement. It has been held in *A.S. Radhakrishna Iyer v. Emperor* (1) that the statement made must be stated as a fact and not as a general imputation or as a matter of opinion. In this case, one of the allegations made is that they (*i.e.* the accused are unjustly eating the common money and the temple money in Zami Pallavaram.

As the allegation does not refer to any particular Act, it was held not to be a statement of fact. Reading Exs. A27 and A28 together, it is seen that these pamphlets are assertions made by the candidates of the public work done by them to merit the support of the voters and the denial of those assertions by the rival candidates. Ex. A27 is a pamphlet issued on behalf of the Town Krishik Lok Party. The pamphlet has denounced the respondent as not having taken any interest in the agitation regarding the removal of cart-taxes. In Ex. A28, which is a reply to Ex. A27, it was stated that the Krishik Lok Party has no hand in the removal of cart-taxes, that under the amendment made in 1954 to s. 63 of the Village Panchayat Act of 1951 it was enacted that in the case of minor panchayats no cart-taxes should be levied from 1-10-1954 and that the major panchayats may impose cart-taxes if they so desire. The Panchayat Board, Parvatipur, removed the cart-taxes even before this amendment of 1954 and cancelled the taxes imposed on about 4800 carts. The names of the members of the then Panchayat Board who presumably are not members of the Krishik Lok Party were also given in Ex. A28. Finally it was stated in Ex. A28(b) that it was left to the voters to decide as to how the subscriptions collected for the agitation for removal of the cart-taxes were utilised by the leaders of the party. Ex. A28(a) may be translated thus:—

> "The ensuing election day will teach a lesson to those bogus leaders who collected half a rupee per bandy on the plea that cart-taxes would be removed and who hanker after personal gain."

(1) A.I.R. 1932 Madras 511.

There is no reference in this passage that the petitioner collected any such funds or that he misappropriated them. The hit is against the leaders of the Krishik Lok Party. The words "*Swalaabhanumaku Praakulaade*" suggest that these bogus leaders do their public work with selfish and ulterior motives. An overall reading of the pamphlet shows that it is a comment on the claims made by the Krishik Lok Party that it alone was instrumental in getting the cart-taxes removed. It was not stated as a statement of fact that any funds were misappropriated by the petitioner. On the other hand, it is more an appeal to the voters to call upon those who collected the funds to give a satisfactory account of them. It was argued for the petitioner that in fact no such subscriptions were collected for purposes of this agitation. It may or may not be true. But there is nothing inherently improbable in collecting funds for a public agitation of this kind. The petitioner himself admitted in his evidence that he has incurred expenditure for purposes of this agitation by getting some pamphlets printed, by hiring mikes and loud-speakers and also for going to Kurnool on deputation in connection with this matter. But he says that he met all this expenditure from out of his own pocket. Whether it is true or not, anyone in the position of the respondent would ordinarily believe that for such agitational purposes common funds would be collected. We are convinced that Ex. A28 is not a slur on the personal character of the petitioner. Further, the wording therein is in very general terms. It does not state how much amount was collected or how much was misappropriated and when and by whom. Ex. A28 may, at the worst, be a general imputation against the leaders of the party, but not a specific statement of fact intended to injure the personal character of the petitioner. There is no evidence on the side of the petitioner that any voter who read Ex. A28 understood it to be an attack upon the personal character of the petitioner and that he has prejudiced by Ex. A28 in the exercise of his franchise.

48. The other method by which the petitioner's personal character was alleged to have been attacked was that for about 15 or 20 days prior to the date of the election, the respondent carried on a false propaganda vilifying the personal character of the petitioner by his agents announcing through mikes and megaphones that the petitioner misappropriated the common funds collected from the cartmen and also black-marketed in cement and iron tyres. This has been denied by the respondent. A large volume of evidence has been let in on both sides on this matter. P.Ws. 2 to 8, 10, 11, 13, 15 to 18, 20, 21, 23, 24, 31, 33, 35 and 39 were examined in support of the petitioner's allegations. R.Ws. 2, 3, 5, 9, 13, 14, 16, 19, 20, 22 and 23 deny the allegations of the petitioner. It is the case of the petitioner that at the junction of the four roads at Parvatipur, which is a very prominent locality, a loud-speaker was installed on a terrace and it was connected to a mike which was operated from an adjacent cycle shop. Through this mike the respondent's men were repeatedly saying that no vote should be given to the petitioner as he misappropriated public funds collected from cartmen and also black-marketed in cement and iron tyres for cart wheels. The same propaganda was carried on through megaphones when election processions of the respondent were being taken out for purposes of canvassing.

49. The oral evidence on both sides is highly interested. The evidence is of partisan witnesses who supported either the petitioner or the respondent in the conduct of the election. We feel it very unsafe to rely upon such evidence In cases of this kind, it is better to attach more importance to the probabilities or improbabilities in the case to arrive at the truth of the allegations made by the petitioner. As we have stated above, the allegations of black-marketing of cement and iron tyres were not made in the list of particulars originally annexed to the petition. It is only by a later amendment long after the Election Petition was filed that these allegations of black-marketing were made. It is the case of the petitioner's witnesses that speak on this topic that through the same mike and at the same time and place the respondent's men vilified the petitioner as having misappropriated public funds and also black-marketed in cement and iron tyres. This propaganda went on incessantly for about 15 or 20 days at a prominent locality to the hearing and knowledge of all including the petitioner. If this were a fact, it is strange as to why the allegation about misappropriation of funds alone was mentioned in the original list of particulars and nothing was said about black-marketing. The omission cannot be said to be accidental or due to want of information by that date. It may also be remembered that in Ex. A28 there is no reference at all to black-marketing of cement or iron tyres. The vilification about black-marketing, on the face of it, also appears to be untrue. The petitioner is not a merchant. He is a practising advocate of Parvatipur. It is said that he was the President of a Co-operative Society, which sold iron tyres in 1950. Even then, no sensible man would start a propaganda against an advocate that he has black-marketed in cement and iron tyres, which, on the

face of it, cannot be believed by any voter. We have, therefore, no hesitation in holding that these allegations about black-marketing of cement and iron tyres are not true and that they were subsequently got up to strengthen the case of the petitioner. When the petitioner's witnesses say that from the same mike and at the same time and place the respondent's men vilified the petitioner as having misappropriated public funds and also black-marketed in cement and iron tyres, and when we disbelieve the story about black-marketing, we must be very slow in giving credence to their evidence as regards misappropriation of public funds. The petitioner is an advocate of good standing at Parvatipur. If really his personal character was injured in the manner in which the petitioner's witnesses deposed for a continuous period of 15 or 20 days, he would certainly have lodged a complaint to the police or himself taken criminal action against the culprits. Such propaganda as this is an offence under s. 171(g) of the Indian Penal Code. The petitioner did not at all move in this direction. Further, if this propaganda had been really indulged in, the petitioner would at least have issued pamphlets denying the allegations made against him, as such a course is of utmost necessity in order to win the confidence of the voters at the election time. He did not do even that. It may also be mentioned that in the list of particulars furnished either before or after the amendment there is no mention that a mike has been used for purposes of this false propaganda. On a consideration of the broad probabilities in the case, we have no hesitation in coming to the conclusion that instance 1 is not true, and we accordingly find against the petitioner.

50. *Instance* 2.—It is the case of the petitioner that the respondent and his men carried on propaganda that the petitioner and his party wanted to make people drunkards by getting the toddy shops reopened. Reliance is placed upon Ex. A38, a pamphlet in support of the petitioner's contention. In it it was stated that the petitioner belongs to a party which was opposed to the policy of Prohibition and which wanted the toddy shops to be reopened. There is no question of vilification of the petitioner's character or conduct in this pamphlet. The policy of the Krishik Lok Party was being criticised. It is not a statement of fact, but is purely a matter of opinion. No individual was personally maligned in Ex. A38 Hence, we find this instance also against the petitioner.

51. *Instance* 3.—It is the case of the petitioner that the respondent and his men spread a false propaganda that the elephant of the respondent, which went round in election processions was badly maimed by cutting the ears, trunk and tail and also blinding its eyes and that on account of this popaganda the voters who look upon the elephant as *'Gaja Lakshmi'* were prejudiced adversely against the petitioner. The respondent denies these allegations. It is the admitted case of both sides that on 10th February 1955 the respondent took out a procession with a live elephant in it and the petitioner took out a procession of jutkas in furtherance of their respective election campaign. Both these processions clashed in a street at Parvatipur, and there was rioting between both the parties. Cases and counter-cases were filed regarding this occurrence. Vide Exs. A168, A169 and A170. Both the cases ultimately ended in the discharge of the accused. It is the case of the respondent that the elephant was injured during this incident. This can be seen from Ex. A169, which is the first information report given by the respondent's party. R.W. 1, the attender of the Veterinary Hospital at Parvatipur deposed that the elephant was brought to the hospital on that day for treatment and that the Doctor attended upon it for some days. None of the petitioner's witnesses says that the elephant was not injured in this rioting. They admit that after this incident on 10th February 1955 the elephant was not seen in the processions of the respondent. P.Ws. 2 to 5, 13 and 33 speak about this occurrence. They say in general terms that the respondent's men carried on a propaganda that the petitioner's agents injured the elephant. None of the witnesses stated that this propaganda roused any religious sentiment in any of the Hindu voters. There is no evidence in this case that the injuring of an elephant would offend the religious sentiments of Hindus. No witness has stated that on account of this propaganda he was prejudiced against the petitioner in the exercise of his franchise. We are of the view that no propaganda as alleged by the petitioner was carried on by the respondent and his men and that an altercation in the clash of two election processions was pressed into service by the respondent for the purpose of this Election Petition by exaggerating the facts. If any such false propaganda was really made, the petitioner would have issued pamphlets repudiating the allegations made against him. No such thing was done. Even if we assume that any such propaganda was done by the respondent's men, we do not think that it comes under s. 123(5) of the Act. There is no other provision under which it can possibly be brought. There can be no doubt in this case that the elephant was injured in the clash. When two rival processions clash and an elephant in one procession is injured, there is nothing

improbable to believe that the rival party caused those injuries. Further, this fact does not, in our view, in any way injure the personal character of the petitioner. The occurrence does not involve any moral turpitude. We do not think religious sentiments have any place for a corrupt practice coming under s. 123(5) of the Act. On a consideration of all these facts, we find this point also against the petitioner.

52. *Instance* 4.—It is alleged by the petitioner that the respondent represented to the Socialist Party that he is an Independent candidate and will remain truly Independent and thus obtained their support. He also represented to the Congress Party that he would rejoin the Congress if he succeeded. The respondent has thus made misrepresentations about his candidature and as such he comes within the ambit of s. 123(5) of the Act. The respondent denies these allegations. The evidence let in by the petitioner is that the respondent made representations to the Praja Socialist Party that he would join their party if he succeeded. But in the list of particulars, it was mentioned that the respondent said that he would truly remain Independent if he succeeded. As regards his rejoining the Congress Party, P.Ws. 12, 13 and 16 speak about this, whereas R.Ws. 7, 8 and 23 deny these allegations. Apart from the truth or otherwise of these two versions, what is required under s. 123(5) of the Act is a statement of fact as it existed on the date on which the statement was made. It can have no application to what a person stated as to what he would or would not do at a future time. Further, it may be that when he made the statement he believed that he would stick to it But it does not prevent him from altering his mind at a future date. If he altered his view, it cannot be made a ground of attack under s. 123(5) of the Act. We are of the view that there is no substance in this contention of the petitioner and hence we find the instance against him.

53. *Instance* 5.—This is the last instance coming under the head of "False Propaganda". It is alleged that the respondent published his pamphlets as Chinna Rajah, *i.e.*, the Junior Rajah of Kurupam, even though the Kurupam Estate was taken over by the Government by the date of the elections under the Madras Estates (Abolition and Conversion into Ryotwari) Act. This was a misrepresentation of fact and as many of the villages in this constituency were Kurupam Estate villages, the voters were influenced by this false representation. There is no substance in this contention. It is common knowledge that even after the estates were taken over by the Government the Rajahs, their sons and brothers are still being called as Rajahs by those who are acquainted with them. After the abolition of the estates and after the Government started collecting the revenue, we do not think that there will be any villager who still thinks that the zamindar had any power or influence over them as a zamindar. There is absolutely no evidence in this case that any voter was influenced by such publication in pamphlets by the respondent as Rajah. Further, the statement of fact must be in relation to the personal character or candidature of any candidate. There is no such reference when a candidate described himself as Chinna Rajah. In fact, that is how the respondent is popularly called by all the people. Hence, we find this point also against the petitioner.

54. The next corrupt practice alleged by the petitioner is disturbance at public meetings. It is the case of the petitioner that in two election meetings held on petitioner's behalf presided over, one by Sri G. Latchanna and another by Sri V. V. Giri at Parvatipur, the respondent's men caused disturbance to the meetings, as a result of which the meetings were dissolved. The respondent denies these allegations. Under s. 100 of the Act an election can be set aside if the successful candidate indulged in corrupt practices, major or minor, under s. 123 or s. 124 of the Act or illegal practices under s. 125 of the Act. Disturbances at public meetings are dealt with under section 127 of the Act. Under this section, disturbance at public meeting is made an electoral offence and the police were given powers to arrest such persons without warrant. Such disturbances are not made corrupt or illegal practices under s. 123 or s. 124 or s. 125 of the Act. The actual culprits alone are sought to be punished under s. 127 and not the candidates, whose agents these culprits were. The candidate cannot be made responsible for such acts nor can it be made a ground for setting aside the election. So, on a technical ground these allegations, even if true, do not affect the election of the respondent. On a question of fact, P.Ws. 33 and 35 were examined in proof of this contention of the petitioner. P.W. 33 deposed that he attended the meetings held under the Chairmanship of Sri G. Latchanna and Sri V. V. Giri and that both these meetings were disturbed by respondents men. He admits that there was police *bundobust* at the meetings. But no report was made to the police about this occurrence. Nor did the police take any action in the matter. The petitioner

was also present at these two meetings and he never brought the matter to the notice of the police. P.W. 33 was a staunch supporter and worker of the petitioner. P.W. 35 corroborates P.W. 33 in some particulars, and he states that there was no police *bundobust* at the meetings. He could not say whether the petitioner attended these meetings or not. When such important and influential personages like Sri G. Latchanna, an ex-Minister of the Andhra State, and Sri V. V. Giri, an ex-Minister of the Union Government, had presided at election meetings and if really there were any untoward occurrences in such meetings, it is incredible that the matter did not attract the notice of the police and no action was taken against the culprits. We are not inclined to believe the evidence of P.Ws. 33 and 35. On a question of fact also we find against the petitioner on this matter.

55. The next corrupt practice pleaded against the respondent is that he got impersonated dead and absent voters. In the list of particulars as originally filed no details were given about this corrupt practice. It was stated in para. 8 of the list of particulars that details would be furnished after checking the polling lists of the polling officers. After a check of the polling lists an amendment petition I.A. No. 6 of 1956 was filed in which three instances were mentioned; (1) Gedela Mangamma of Jagannadhapuram, Parvatipur, impersonated Gedela Chinnammi of the same village and voted for her in favour of the respondent. (2) Jammi Suryanarayana, resident of Narayanapuram, impersonated Jammi Satyanarayana deceased and voted in favour of the respondent. (3) Vaddikanchari Suvarni of Jagannadhapuram impersonated Vaddikanchari Brindavanam and voted for him in favour of the respondent. It was further stated that the impersonation took place at the instance of the agents of the respondent.

56. No evidence was let in before us as regards instances 2 and 3 and they were not pressed. Evidence was let in only with regard to the first instance. Before we discuss the evidence on the matter, it is better to state the legal position on the question of impersonation of a voter. Section 123(3) of the Act reads thus :—

> "The procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name or by a person for a ballot paper in his own name when by reason of the fact that he has already voted in the same or some other constituency is not entitled to vote."

If the impersonation was made by a candidate or his agent or by any other person with the connivance of a candidate or his agent it becomes a major corrupt practice coming under section 123(3) of the Act, and under section 100(2)(b) of the Act a single instance of such corrupt practice is sufficient to declare the election as void irrespective of the fact whether the election was materially affected by the casting of such impersonated vote. But if such impersonation is made by a person who is not a candidate or his agent or by a person acting with the connivance of a candidate or his agent, it is a minor corrupt practice coming under section 124(1) of the Act, and under section 100(2)(a) of the Act the election will not be set aside unless it is materially affected by such corrupt practice. So, in the latter case, if the impersonation is true, we have further to see whether by excluding such impersonated votes, the election as a whole is materially affected. So, the points for determination are :—

1. Whether there was impersonation?
2. If so, whether it was procured by the candidate or his agent or by any other person with the connivance of the candidate or his agent?
3. If not, whether the election is materially affected?

57. The only instance of impersonation about which evidence was let in was that Gedela Mangamma impersonated Gedela Chinnammi. P.Ws. 28 to 34 were examined on behalf of the petitioner in proof of this. P.W. 28 is Gedela Chinnammi, who is said to have been impersonated. She is the wife of Achayya, son of Appalaswamy. Her farther-in-law's name is Appalaswamy. This Appalaswamy had a divided brother Ramaswamy, whose son is also called Achayya *alias* Appalaswamy. This Achayya's wife is Chinnammi alias Mangamma. P.W. 28 swore that she did not vote at the election, as she was then suffering from pains due to an impending delivery by her of a child. P.W. 29 is Gedela Chinnammi who is said to have impersonated P.W. 28. Her husband is Achayya and her father-in-law's name is Ramaswamy. She deposed that she is also called Mangamma. She cast her vote at the last election. She deposed that P.W. 28 is also

called Chinnammi. Ex.A84 is the electoral roll of the Parvartipur Panchayat Board. Ex. A84(a) reads as follows :

"510—3—40—Chinnammi, Gedela (Achayya)—Female—25".

P.W. 31 is the Village Munsif of Jagannadhapuram, hamlet of Parvatipur. He deposed that P.W. 28 is called Chinnammi and P.W. 29 as Mangamma, that P.W. 29 cast her vote on the day of the election but that she was not a registered voter. P.W. 30 who was the agent of the petitioner challenged this vote before the Polling Officer. Ex. A85 is the list of challenged votes. In column 5 of Ex. A85 it was noted as follows :—

"Munsif says that her name is called as Gedela Mangamma. But they may call her in her native place or at house as Chinnammi which I do not know. Her husband's name is Appalaswami but not Achayya as mentioned in the electoral roll."

It is therefore abundantly clear from the above evidence that P.W. 29 had really no vote but yet she voted under the name in Ex. A84(a) which is that of P.W. 28. P.W. 29 says that she is also called Chinnammi at her house. It may be that P.W. 29 by mistake exercised the vote under the name mentioned in Ex. A84(a) or that she wilfully impersonated P.W. 28. At any rate, there can be no doubt that P.W. 29 impersonated P.W. 28. We, therefore, believe that there was impersonation in this case.

58. But the more important question to be decided is, whether this impersonation was done at the instance of the respondent or his agents or at their connivance. It is the petitioner's case that one Bantupalli Gumpuswami (R.W. 22) sent for the voters at Jagannadhapuram through one Sivudu Naidu, that P.W. 29, P.W. 32 and some others went to a shed called Valireddi Vari Sala, where R.W. 22 was waiting for them, that R.W. 22 told P.W. 29 to represent to the Polling Officer that her name was Chinnammi and not Mangamma and that her husband's name as Achayya, that P.W. 29 protested saying that her name was Mangamma and not Chinnammi but that on the assurance given by R.W. 22 that there would be no fear as Gowrichandra Rajaguruvu, a worker on behalf of the respondent, would accompany them and see that no trouble would arise, she went and voted. It is alleged that R.W. 22, Sivudu Naidu and Gowrichandra were all agents of the respondent at the election and it was at their connivance that this impersonation took place. It must be mentioned at the outset that even though the petitioner introduced this incident by way of an amendment at a very late stage, he did not state even in this amended list of particulars as to who was the person that procured this impersonation He merely stated that the impersonation took place at the instance of the agents of the respondent. When such a serious charge is made against the respondent, it is the duty of the petitioner to make the allegation clear in the list of particulars so as to enable the other side to meet the contention. Under section 83(2) of the Act, the petitioner must set forth the full particulars of any corrupt practice pleaded by him including the names of parties alleged to have committed such practice and the date and place of the commission of such corrupt practice. Here, if the agents above-named were the persons who committed the corrupt practice to the knowledge of the petitioner even at the time when this Election Petition was filed, their names would certainly have found a place in the list of particulars originally filed or later amended. The petitioner cannot now be heard to say that R.W. 22 and other agents of the respondent did this act. The non-mention of the names of these persons is, therefore, fatal to the contention of the petitioner.

59. P.W. 29 is the person who impersonated. She does not say that she met R.W. 22 on the polling day. P.W. 32 is the witness who introduced for the first time the names of the agents who are alleged to have procured this impersonation. He owns no property and admits that he lives by begging on festive occasions. He filed a criminal complaint against R.W. 22 for alleged misappropriation of certain funds of a Co-operative Society. The misappropriation was about 5 years back. But the complaint was filed after the election. The petitioner was his advocate in this complaint Apart from interestedness in the petitioner, the story as given by P.W. 32 is very improbable. It is alleged that P.W. 29 was instigated by R.W. 22 to impersonate while he and others were at Valireddi Vari Sala, a thatched shed very near the polling booth. The respondent's men were giving chits to voters in that shed. According to P.W. 32, the petitioner's agents also were giving chits to the voters in the same shed. P.W. 32 did not question R.W. 22 why he was asking P.W 29 to do such a wrongful act when he saw and heard the whole occurrence. He did not even report this matter to the polling booth was one Rajaguruvu, who was admitted to be a rich and matter to the petitioner then. The person who is alleged to have taken P.W. 29 respectable man.

60. P.Ws. 33 and 34 corroborate P.W. 32. P.W. 33 is a tailor who worked for the petitioner in the election. In the Panchayat Board Elections at Parvatipur, P.W. 33 opposed R.W. 22 for a membership and failed. It was P.W. 33 that brought P.W. 32 to court to give evidence in this case. P.W. 34 deposed that at 10 a.m. on the election day, while himself, P.W. 32 and a number of others were present, R.W. 22 told P.W. 29 to impersonate P.W. 28. P.W. 34 appears to be a close relation of P.W. 29, who knows both P.W. 29 and P.W. 28, and yet he did not protest to R.W. 22 that P.W. 29 was not a voter. R.W. 22 is the President of the Panchayat Board. He was an active supporter and a principal worker of the respondent throughout the constituency. It is hard to believe that such a worker would sit in a shed giving chits to voters on the election day. It is equally incredible that R.W. 22 in the presence of the agents of the opposite party had asked P.W. 29 to impersonate P.W. 28. P.W. 16 deposed that on the election day he saw R.W. 22 taking voters in a Jeep at Veeraghattam about 10 miles away from Parvatipur. P.W. 17 says that he saw R.W. 22 at Kodabandapalli, another village in the constituency, canvassing for votes on the election day. The evidence of these witnesses show that he was working on the election day touring from place to place and sending voters to the polling booths. If this is true, it is doubtful whether R.W. 22 was at Valireddi Vari Sala in Parvatipur on the election day giving chits to voters and asking P.W. 29 to impersonate P.W. 28.

61. P.W. 30 is the polling agent of the petitioner at the Women's Booth for 12th and 13th wards of Parvatipur. It was he who challenged the vote of P.W. 29. He deposed that the agent of the respondent at that booth Narayana Panda R.W. 19 stated that P.W. 29 was Chinnammi, wife of Achayya. This witness deposed in a criminal case C.C. No. 317 of 1955 that he never worked in elections for the petitioner and that he did not act as his polling agent at Jagannadhapuram. Ex. B22(a) is marked for contradicting the evidence of this witness. When confronted with this, he stated that he does not remember what he stated in Ex. B22. This witness seems to have scant respect for truth and had the audacity to deny that he worked as a polling agent for the petitioner when there is clear documentary proof of his having acted as the polling agent of the petitioner on the day of the election.

62. R.W. 19 is the agent of the respondent at this polling booth. He deposed that he never said anything about the identity of P.W. 29 before the Polling Officer. He deposed that he merely stated that the name of P.W. 29 and her husband's name tallied with the entries in the electoral roll. He further deposed that he had definite instructions from the respondent not to permit persons who attempt to impersonate to vote at the election. R.W. 21 is the Assistant Lecturer in the Andhra Polytechnic, Kakinada, who worked as the Polling Officer on 15th February, 1955 at the booth in question. He deposed that P.W. 29 gave her name and her husband's name as given in the electoral roll Ex. A84(a), that this vote was challenged by the petitioner's agent P.W. 30 and that he enquired into the matter and prepared the list of challenged votes Ex. A85. He further deposed that the respondent's agent R.W. 19 did not say that he personally knew P.W. 29, nor did he identify her. The Village Munsif identified P.W. 29 and what the Munsif stated was noted in column 5 of Ex. A85. Column 8 contains the remarks of R.W. 21. It is stated therein that the respondent's agent R.W. 19 said that the name of P.W. 29 and her husband's name tallied with the names in the electoral list. It is not noted therein that R.W. 19 identified P.W. 29. It is therefore clear from the evidence of R.W. 19 and R.W. 21 and Ex. A85 that the respondent's agent at the booth was not responsible for the impersonation and that he merely stated that the names as given by P.W. 29 tallied with those in Ex. A84. Any agent would naturally say that. On a consideration of all this evidence, we have no hesitation in holding that even if P.W. 29 impersonated P.W. 28, this impersonation was not procured or connived at by the respondent or his agents and that it was purely an act of P.W. 29 alone. In this view of the case, it is not a major corrupt practice coming under section 123(3) of the Act. It comes only under section 124(1) of the Act as a minor corrupt practice and, as we observed above, unless the election is materially affected by the reception of this vote, the election cannot be set aside. The difference in votes between the two candidates is 9,369 and even if this impersonated vote is excluded, still the respondent would have a large majority to succeed in the election. We, therefore, hold that the petitioner fails in this contention.

63. In para. of the petition it was stated that the Village Karnams have all been engaged by the respondent and his agents for canvassing purposes. No details of this were given in the list of particulars. Later, an amendment petition was filed in M.P. No. 1 of 1956 in which only the names of villages were given and not the names of any of the Karnams or any other details as to how they worked for the respondent in the elections. Full particulars as required under section 83(2) of the Act have not been given. Realising this defect, the petitioner

did not press this amendment and hence it was disallowed in M.P. No. 1 of 1956. No evidence was let in this matter. The petitioner did not press this contention and hence it is disallowed.

64. *Leaflets.*—It is the contention of the petitioner that the leaflets issued on behalf of the respondent do not bear the name of the publisher, though the name of the printer was shown therein. This is an illegal practice coming under section 125(3) of the Act. It is, no doubt, true that the name of the publisher was not printed in the pamphlets issued by the respondent. All the pamphlets bear only the name of the printer. In the Law of Elections in India by Nanakchand Pundit, at page 367, it is stated as follows:—

> "The name of the press may be taken as the trade name of the printer and by the comity and custom of the printing trade the printer of a pamphlet is assumed to be the publisher also."

Under section 100(2)(a) of the Act an election can be set aside for the commission of an illegal practice coming under section 125 of the Act only when the result of the election is materially affected by such practice. There is absolutely no attempt made by the petitioner to show as to how the non-publication of the name of the publisher materially affected the election. No petitioner's witness—not even the petitioner—spoke about this in his evidence. In Nanakchand Pundit's book above referred to, at page 367, it is stated:

> "Where the omission of the name of the printer or publisher has not affected the result of the election so as to bring it within section 100(2)(a) of the Act of 1951, the election cannot be declared void on that account."

Hence we find against the petitioner on this contention.

65. *Submission of false return of election expenses.*—It is the case of the petitioner that the return of election expenses submitted by the respondent is false and that the real expenditure far exceeded what was shown in the election return. In the list of particulars originally annexed to the petition the petitioner mentioned a number of persons from whom the respondent received contributions for his election expenses and which he did not show in his return. He vaguely stated that the use of cars was very badly accounted for. He later amended this particular by giving the details of the cars used in the election campaign by the respondent. Under section 44 of the Act every election agent shall keep a regular account of the expenditure incurred by him in connection with his election campaign. The maximum amount that a candidate for a single member constituency for the State of Andhra can spend is Rs. 8,000 as can be seen from Schedule V of the Act. Under section 123(7) the incurring or authorising by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of this Act or any rule made thereunder is a major corrupt practice. If any candidate or his agent, therefore, spent for purposes of his election more than Rs. 8,000, it becomes a corrupt practice and the election can be set aside under section 100(2)(a) of the Act without any further consideration. Under section 124(4) of the Act, the making of any return of election expenses which is false in any material particular is made a minor corrupt practice and the commission of such a practice comes within the purview of section 100(2)(a) of the Act, whereunder, in addition to the Commission of the minor practice, a further case that the result of the election was materially affected has to be made out. Under section 83(2) of the Act, where corrupt practices are alleged, full particulars have to be given. Bearing these facts in mind, it is now to be seen what exactly is the contention of the petitioner relating to the return of election expenses and under what section, *i.e.*, whether under section 123(7) or under section 124(4), he brings his allegations.

66. Ex. A150 is the respondent's return of election expenses, which shows an expenditure of Rs. 4,557-10-6. If it is the petitioner's case that this is a major corrupt practice coming under section 123(7) of the Act, he must definitely plead that the respondent actually incurred an expenditure exceeding Rs. 8,000, which is the prescribed limit fixed under the Act and the Rules framed thereunder. In addition to that, he must also give the details of the expenditure which the respondent incurred and which he did not show in the return. A persual of the Election Petition and the list of particulars filed even after the amendment would show that it is not the case of the petitioner that the respondent incurred an expenditure more than the prescribed limit. It is his case that the election return was false in material particulars and that the expenditure which he really incurred was not shown in the election return. Nowhere did he say that if that expenditure also were shown in the return, it would exceed the prescribed limit. It is, therefore, clear that this contention of the petitioner, even if proved, would come only under a minor corrupt practice and not under a major corrupt practice.

But in the course of the arguments, the petitioner's advocate wanted to show that the expenditure actually incurred by the respondent really exceeded the prescribed limit. As we observed above, that was not his plea in the petition and this initial defect therefore stands in his way.

67. Even on a consideration of the facts, we are not convinced that sufficient material has been placed before us to show that the respondent actually did spend more than the prescribed limit. It is the case of the petitioner that ADV. 2619, a lorry of G. Sitaramaswami, ADV. 405 a lorry of Medatha China Babu, ADS. 1609 spare bus of the Jai Shankar Motor Bus Co., ADV. 293 car of Dr. Anjaneyulu, MDV. 330 Reddi's van, and the weapon carrier of the respondent were not shown in the election return as having been used for election work. It is the case of the respondent that he used his own car, Jai Shankar's spare bus, his weapon carrier and a Kalhandi Jeep. The use of other vehicles was denied. The petitioner has summoned the petrol books of the bunks from which the respondent took petrol for election work. He has not been able to show us even one bill showing that any petrol was taken for any of the vehicles pleaded by him other than those admitted by the respondent. In all the petrol bills the number of the vehicle would be noted. Some oral evidence was let in by the petitioner to show that the vehicles pleaded by him were all used by the respondent. This was denied by an equally strong evidence adduced on the respondent's side. This kind of oral evidence takes us nowhere when no documentary evidence, which would certainly be available if the petitioner's contention were true, was not produced before us.

68. It is further contended by the petitioner that the respondent did not show in his election return the actual hire which the vehicle would have fetched had he taken that vehicle on hire, though in fact he did not actually incur any expenditure under this head. Rule 111 of the Rules framed under the Act says that payments made for expenditure actually incurred on account of the election ought to be entered in the return. Where no expenditure was, as a matter of fact, incurred as, for instance, in cases where the owners use their own vehicles or where friends voluntarily lend their cars free for being used in the elections, it is not necessary for the respondent to calculate the hire which he would have paid if he had taken such vehicles on hire and then show the same in the election return as though he had actually incurred that expenditure. Of course, if petrol was purchased, whether it be by the respondent or the owner of the vehicle for purposes of using the vehicle for election purposes, the cost of the petrol must certainly be shown in the election return. The respondent has shown the cost of petrol in Ex. A150 for the vehicles admitted by him to have been used. As we observed above, the petitioner has not been able to show that the full cost of petrol was not shown in the election return or that the respondent incurred expenditure for petrol for any cars other than those admitted by him. It is by a hypothetical calculation of the hire which the respondent would have paid if he took these vehicles on hire that the advocate for the petitioner wants to show that the real expenditure exceeded the prescribed limits. We are not prepared to agree with this contention. There is also no cogent evidence as to the actual number of days on which the vehicles pleaded by the petitioner were used and the mileage they covered on each day. Excepting this expenditure relating to vehicles, there is no other item of expenditure which the petitioner contends has not been shown in the election return.

69. The petitioner pleads that the respondent received some contributions for his election expenses from several individuals whom he named in the list of particulars. No attempt has been made to prove even a single contribution from out of that list. We, therefore, find that the petitioner fails in his allegation that the respondent committed any major or minor corrupt practice in the submission of his return of election expenses.

70. *Bribery.*—In paragraph 7(h) of the petition, it was alleged that the respondent had indulged in acts of direct and indirect bribery on a large scale. In para 10 of the list of particulars he stated that the appointment of one Panthula Satyanarayana (R. W. 20) on a salary of Rs. 80/- per mensem as a clerk of the respondent for doing the election work is itself an act of bribery. It is the case of the petitioner that R. W. 20 was only a pleader's clerk on Rs. 15/- per month and that this high salary of Rs. 80/- per mensem was paid to him because of his influence in the constituency and that therefore this payment of high salary is an act of bribery. R. W.20 deposed that he worked as an election agent for the respondent's brother, for the respondent at the bye-election and also at this election in question. He was paid Rs. 80/- per mensem in all these elections. He is a registered pleader's clerk on Rs. 25/- *plus* the "voluntary" offering, which he gets from the clients. In the bye-election the Secretary of

the Andhra Provincial Congress Committee appointed him as an election agent and paid him Rs. 80/- per mensem. We find there is no substance in the contention of the petitioner. A salary of Rs. 80/- per mensem for an election agent whose duty it is to tour the entire election area and maintain the election accounts is not such an excessive amount as to draw an adverse inference against the respondent. This contention is, therefore, found against the petitioner. There is no other act of bribery pleaded or proved.

71. *Conveyance of voters.*—The last corrupt practice pleaded by the petitioner is that the voters of certain villages were conveyed to the polling stations by fleets of bandies and also by Jai Shankar's spare bus. This is denied by the respondent. Under s. 123(6) of the Act, conveyance of voters by a candidate or his agent to the polling booths is made a major corrupt practice. In the list of particulars as originally given, the petitioner gave the names of villages, the voters from which were carried or conveyed by fleets of bandies to the polling stations. He further stated that the Jai Shankar's spare bus has been freely used throughout the election to carry voters on 15-2-1955. It is seen from this particular that no details are given as to the owners of the bandies that conveyed the voters or the persons who procured or hired these bandies on behalf of the respondent. Even as regards Jai Shankar's spare bus these details are lacking. The petitioner amended this particular in I.A. No. 6 of 1956 by adding the following:—

> "The bus carried voters in Parvatipuram Town and from Vikrampuram to Kella, from Venkampeta to Narsipuram and from Gangarenivalasa to Kotipam."

Even in this amended particular no details are given as to who were the respondent's agents that procured or connived at this corrupt practice of conveying voters to the polling booths on respondent's behalf. As we observed above, this particular is very essential to be given under s. 83(2) of the Act and non-mention of it is fatal to the contention of the petitioner.

72. Even on facts we are not satisfied that the respondent conveyed voters to the polling booths as alleged by the petitioner. P. W. 22 is a resident of Artham. He deposed that his village was attached to the polling station at Duggi, 3 miles from Artham, that female voters came in 4 or 5 bandies from his village to the polling station and that one Kalidindi Suryanarayanaraju belonging to the respondent's party came with the bandies. He admitted in cross-examination that his females came in his own cart and that the females of other families came in their own carts. On the respondent's side R. W. 12 was examined to contradict this evidence of P. W. 22. R. W. 12 belongs to Artham and his is the only Kshatriya family in that village. There is no person by name Kalidindi Suryanarayanaraju in that village. R. W. 12 worked as the polling agent of the respondent and he swore that he never took any female voters in bandies from his village to Duggi. This is the only evidence on both sides so far as this village is concerned. We are not satisfied with the evidence of P. W. 22 and hence reject the same.

73. P. W. 23 belongs to Konkudidevu. This village is attached to the polling station at Balagodava. P.W. 23 deposes that after casting his vote at 10 A.M., he returned back to his village and then went to Gottivalasa in connection with his contract work. On his way he had to pass through a garden near Gottivalasa village. He found in the garden 15 double-bullock carts and volunteers bearing the badges of the elephant symbol. One Poli Naidu, whom he knew, was there. He told P.W. 23 that he brought all these voters from Uddavolu by bandies. He paid Rs. 30/- as bandy hire to the cartmen in his presence. Poli Naidu is said to be the agent of the respondent. This witness admits that he worked for the petitioner in the two previous elections, but denies that he worked for him in this election. But he was in fact appointed in this election as a polling agent at Balagodava and he signed the agent form also. But he says that he did not actually work at Balagodava. He is not able to give the names of any of the voters that were conveyed or the names of the cartmen. He says that Poli Naidu is the agent of the respondent, but he is not able to give his family name. When this Witness was actually appointed as a polling agent at Balagodava by the petitioner, it is incredible that he was at Gottivalasa on that day. We do not believe P.W. 23 when he says that though he signed the election agent-form he did not actually work as an agent. It is also incredible that the respondent's agents, if they really brought voters in bandies, would tell P.W. 23 that they did so and would pay the hire to the cartmen in his presence.

74. P.W. 25 supports P.W. 23. Though there was polling in his village, he went to another village Gottivalasa for the sake of curiosity. He states that one Krishnamachari R.W. 11, who was issuing chits to voters, gave Rs. 30/ to

the cartmen. Yedla Bucheyya and R.W. 10 were two of the cartmen that conveyed the voters, according to him. This took place in a mango garden, which is about 10 yards from the polling booth. He admits that he worked for the petitioner in this election. He is not able to give the names of any of the voters that came by the bandies. While it is the case of P.W. 23 that the amount of Rs. 30/- was paid by Poli Naidu, this witness says that Krishnamachari paid the amount. We are not at all impressed with the evidence of these two witnesses examined on behalf of the petitioner. We do not find any of the details given by them in the list of particulars filed either before or after the amendment. The respondent examined R.Ws. 10 and 11 to deny this occurrence. R.W. 10 is the cartman mentioned by P.W. 25 as having carried the voters and R.W. 11 is A. Krishnamachari, who is said to have paid the hire. Both of them denied that any such occurrence took place. We, therefore, hold that the occurrence as alleged by the petitioner is not proved to our satisfaction and hence we find this contention against the petitioner.

75. A third instance of this type is the conveyance of voters from Dasumathapuram to Kambala, where the polling station was situated. P.W. 19 is the only witness who speaks about it. He is not a resident of this constituency at all. He lives in Pedda Bondada, which is in Nanguda constituency. He says that he came on the election day into this constituency to see how the polling was going on. He saw voters being brought by Sivudu Naidu, the agent of the respondent, in 15 carts. This witness was neither summoned nor produced by the petitioner to give evidence. He says that he attended the sittings of the Tribunal on 4-8-1956 without being asked by anyone just to see how this Tribunal works and that seeing him the petitioner examined him in Court. This is an incredible story. He does not know the cartmen or the voters. We are not impressed with his evidence and accordingly reject this instance also.

76. The last instance is the conveyance of voters from Venkampeta to Narsipuram by the Jai Shankar's spare bus. It may be remembered that in the amended list of particulars it was mentioned that Jai Shankar's spare bus had conveyed voters in four places on the election day. But evidence was let in only in connection with the conveyance of voters from Venkampeta to Narsipuram. P.W. 18, 26 and 27 speak about this. P.W. 18 is a resident of Narsipuram. He deposed that on the polling day the voters of Venkampeta were brought to Narsipuram in a bus. One Koneti Ramanujayya R.W. 13 brought the voters in the bus. He also gives the names of some voters who were brought in that bus. He was a worker for the petitioner in the election. He is not able to give the registered number of the bus or the booth to which the voters were taken. P.W. 26 is a resident of Narsipuram. He was the election agent of the respondent at Narsipuram as can be seen from Ex.A83. His evidence is to the effect that the Jai Shankar's spare bus carried voters from Venkampeta to Narsipuram on the election day, that as the bus did not come for a second trip he wrote Ex.A81 to Koneti Ramanujam, a worker at Venkampeta, to send the bus, and that after the sending of the letter the bus came again two times bringing the voters. P.W. 27 is a resident of Venkampeta. He deposed that while he was sitting at *Rama Mandir* a boy brought the letter Ex.A81 and gave it to Koneti Ramanujayya, who was the agent of the respondent. Ramanujayya after reading the letter tore it to pieces, threw them away and went out. P.W. 27 gathered all the torn pieces of the letter, put them up together and read the contents. He then put all the pieces into his pocket and later gave them to the petitioner in 2 or 3 days. The story given by these two witnesses, P.Ws. 26 and 27, is very fantastic and artificial. P.W. 26 starts his evidence by saying that he was not the respondent's agent and later sails the whole hog with the petitioner, as though he was compelled to give his evidence because of Ex.A81. This is all a make believe attempt to give some effect to his evidence. He is a polling agent working at a booth. He will not generally be interested in what is going on outside the booth. He is not interested in knowing which voters and from which villages were being conveyed in vehicles and sent by which agent or agents of the respondent. He says he wrote this letter Ex.A81 during the lunch interval. But in one portion of his evidence he contradicts himself by saying that he met the driver of the bus at 11 A.M. and learnt from him that he was not coming again and that was why he wrote Ex.A81. If he was in the booth till lunch interval, he could not have come out at 11 A.M. and talked to the driver. He is not able to give the name of the petitioner's polling agent sitting at that booth or the name of the Polling Officer at that place. While P.W. 27 says that the first batch of voters who left Venkampeta by the bus came at 2 P.M., P.W. 26 says that they came by 11 A.M. only to Narsipuram.

77. The evidence of P.W. 27 is more fantastic. He was a great sympathiser of the petitioner and also an adjacent owner of lands along with the petitioner. If really P.W. 26 sent Ex.A81 to K. Ramanujayya, the alleged agent of the respondent, it passes one's comprehension as to why he should tear the letter to pieces, and even more, throw them away at a public place. Even if Ramanujayya had torn the letter and thrown away the pieces, it is not known why P.W. 27 should be so curious as to pick up those torn pieces, arrange and place them up together, read their contents and explain to those that were present there the contents of that letter and the objectionable methods that were being adopted by the respondent. None of the persons said to have been present at *Rama Mandir* when this had happened was examined by the petitioner. He goes the length of saying that he is in the habit of collecting torn pieces of letters like this, piece them up together and read them. He says he did so 25 or 30 times before. He is a man aged 85 years and yet he says he took the trouble of reading these torn letters with his failing eye-sight. He gave these torn pieces to the petitioner within 2 or 3 days after the incident. Yet, this document saw the light of the day on 3-9-1956, when P.Ws. 26 and 27 were examined. If this letter was in the custody of the petitioner even before he filed the Election Petition, it is his duty not merely to have mentioned about it in his Election Petition or in the list of particulars but also to file it into Court at the earliest opportunity so as to enable the respondent to meet the documentary evidence that is sought to be let in against him. This document is said to be in the custody of the petitioner alone and he cannot be heard to say that he kept it back to prove it through a witness. This Jai Shankar's bus is a public conveyance. The respondent took permission from the Regional Transport Officer to use it till 14-2-1955. There was no permission for the movement of this bus in the election area on 15-2-1955. If it did really move, it would not have escaped the notice of the police. One other fatal objection to this instance is that this was not mentioned in the original list of particulars. If Ex.A81 was in the hands of the petitioner even before he filed the Election Petition and if P.W. 27 had told him what all he had now deposed in Court, this instance would have been the first and foremost instance that should have been mentioned in the list of particulars. It is not explained as to why this was not done. We have no hesitation in holding that P.Ws. 26 and 27 had perjured themselves and that both of them conspired together and brought about Ex.A81 to create some documentary evidence in this case. We hold this instance also against the petitioner.

78. We, therefore, hold under issue 6 that the respondent did not commit any of the corrupt practices alleged in para 7 of the petition or in the list of particulars annexed to it.

79. In the result, we dismiss the petition with costs. Considering the volume of evidence let in this case and the time occupied, we fix the costs payable to the respondent at Rs. 500/-, inclusive of respondent's advocate fee.

Dictated to shorthand-writer and pronounced in open Court, this 19th day of March 1957.

(Sd.) T. H. M. SADASIVAYYA,
Chairman.

(Sd.) C. NARASIMHACHARYULU,
Judicial Member.

(Sd.) M. SITHARAMAYYA,
Adocate Member.

[No. 82/4/55/1909.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.

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